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23

of the Access to Information Act
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From: Fair Duty [mailto:comment+la39m_r0mm97i_le_r6goq@comment.wordpress.com]
Sent: Monday, August 3, 2015 10:25 PM
To: barry.mandelker@pch.gc.ca
Subject: [New post] with due respect to PricewaterhouseCoopers

Meera posted: Howard Knopf (a prominent attorney and longstanding advocate for maintaining the limits upon copyright as prescribed by law) has drawn our attention to a new study commissioned by Access Copyright and carried out by PricewaterhouseCoopers (PwC). The study

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New post on Fair Duty



with due respect to PricewaterhouseCoopers

by Meera

Howard Knopf (a prominent attorney and longstanding advocate for maintaining the limits upon copyright as prescribed by law) has drawn our attention to a new study commissioned by Access Copyright and carried out by PricewaterhouseCoopers (PwC). The study concludes that the end is nigh for educational publishing in Canada. Which in turn shall impose great hardships upon Canadian authors and illustrators, and ultimately mark the end of Canadian culture. The root cause of these troubles, according to PwC's assessment, is the advent of fair dealing upon the Canadian educational landscape. Because fair dealing is actually practiced now (with the guidance of the Association of Universities and Colleges Canada (AUCC) and Colleges and Institutes Canada (CIC)), the publishing industry is denied its time-honoured income gained through blanket-licensing of written materials for education in Canada.

There was a time when I would direct students to PwC reports as exemplars of informed and dispassionate analysis. I am not sure I would do so today. With due respect to PwC, their knowledge of copyright in general (and fair dealing in particular) is scant. But even setting

aside any lack of understanding of copyright, the spectacle of being a paid messenger to a biased cause does little credit to PwC.

And the message is this: Canadian educational publishers can maintain their industry only by returning to the level of payments received from schools and post-secondary institutions in the past. Educational institutions must continue spending as before, regardless of: (1) the position of the law, (2) the general decline of funding to education, (3) availability of alternative resources, or (4) better fiscal management on the part of educators and administrators. All of this is set upon a lament about the perils of coping with new technology.

Incidentally, that lament has been heard with every past introduction of a new medium. The script remains unchanged: that existing industries are threatened, they are endeavoring to cope with a strange new world, and if their demands are not met then culture and attendant jobs will go the way of the dodo bird. A modest historical exploration would confirm that the printing press did not end the creation of literature (or the art of calligraphy), musical composition did not stop because of the player piano, the film industry did not collapse with the arrival of the VCR (indeed, studios found new markets in the form of the home-movie-collection), and digital technology has strengthened the music industry today.

Returning to the report, its premise is voiced as a complaint. In describing their mandate, PwC refers to the fair dealing guidelines framed by AUCC and CIC: "which, we understand, were developed without the input of the writing and publishing industry, claim to authorize educational institutions to make copies of portions of published works without permission from, or payment to, the copyright holder (p.13)."

PwC is clearly aware of CCH Canadian (2004) but makes selective use of it. A complete reading of the decision would have alerted PwC that the current guidelines are structured along the terms of the Access Policy of the Great Library which allowed for copying of modest amounts of work (*one case, one article etc.*) with requests for greater copying to be further examined (2004 SCC 13, para 61.) In declaring such a system as fair dealing, our Supreme Court gave the blueprint for the fair dealing policies now followed across Canada. Moreover, further words from the Supreme Court established the viability of sheltering legitimately, unauthorized copying in educational institutions, as fair dealing (Education v Access, 2012 SCC 37).

It is disappointing to hear that Canadians (individuals or institutions) need to solicit input from others, before choosing to act under the law as it is sanctioned by our highest court.

Of course, Access Copyright may use this report as they see fit; Knopf muses that the report will be presented to the Copyright Board when the Board moves on Access Copyright's

requests for tariffs linked to educational copying. Knopf also reiterates his observation that the Board is taking a more inquisitorial role in its hearings.

For instance, the Board might place close attention to this passage from the executive summary: "With less content purchased for the [K-12] classroom, teachers are increasingly required to fill the void by copying and repurposing published content (p.4)."

No citation is given; there is no effort to indicate how much content is involved or how often these actions occur. In the early pages of a 95-page report, it sets a tone of rampant piracy. The term "fair dealing" is entirely absent. Granted, it is the interpretation of fair dealing that is being taken to task, but to refrain from even a cursory acknowledgement that Section 29 of the *Copyright Act* may very well shelter these actions (depending on the facts of each situation) is, at best, an error on the part of PwC. At worst, it is intentionally misleading.

Regarding the thrust of that passage, readers may recall that when a decline of purchasing of educational content in the K-12 sector was brought to the attention of the Supreme Court in 2012, our justices acknowledged:

... as noted by the [educational representatives], there was no evidence that this decline was linked to photocopying done by teachers. Moreover, [they] noted that there were several other factors that were likely to have contributed to the decline in sales, such as the adoption of semester teaching, a decrease in registrations, the longer lifespan of textbooks, increased use of the Internet and other electronic tools, and more resource-based learning (2012 SCC 37, para.33).

On that same theme, PwC continues:

As the market shifts away from the purchase of traditional paper-bound textbooks to the adoption of digital technology, the revenues of K-12 publishers and related creators have fallen dramatically. Total revenues generated in the K-12 Educational Publishing Market has declined by 40% since 2008 (p.4-5).

It is plausible that the collapse of global economies in 2009 also had some influence here. In any case, the K-12 educational body falls at the bottom of the funding totem pole. Transfers of taxpayer dollars flow from the federal government, through provincial and municipal governments before making their way to school boards and schools. And, unlike post-secondary institutions, tuition dollars are not a reliable component of school budgets. (Interestingly so, PwC observes a much smaller drop in revenues from the post-secondary sector; see p.12). In an era of cost-cutting and belt-tightening, it should come as no surprise

that schools are spending less and looking for alternatives with respect to quality educational materials.

Perhaps one of the most startling aspects of PwC's report is the disdain for efforts among educational communities to develop and circulate materials of their own. Section 7.1.1.1 *Emerging models for K-12 materials* (p. 49-51) describes some of these initiatives; notably characterized as "disruptive business models" as they shift money away from the past structures of the Educational Publishing sector. The efforts by provincial governments to promote collaboration among stakeholders in the pursuit of less-expensive, suitable material for K-12 students are mentioned without praise, even though taxpayers might see such steps as productive. The report also indicates that schools are: "... increasing use of content sources from the Internet; and making more use of open-source educational content ... [content that can be copied and shared for free] (p.51)." Again, this is laudable but not to PwC:

Open Educational Resources (OER) are a threat to traditional publishers as they provide textbook and course materials for free. Some school boards have access to digital content developed by the Ministry and/or teachers free of charge. ... For now, exchanges of content between provinces remain limited however this is expected to increase in the future (p.51)"

In PwC's hands, good educational content has very narrow boundaries; such content is deemed as only those materials that are legitimate to use via a paid license fee to a member of Canada's "Educational Publishing Industry." But even when speaking of the decline of licensing fees in Canada, the emphasis is upon the decline of blanket license fees, meaning a set fee per student, for all students, paid to Access Copyright. (PwC seems oblivious to its patron's own role in this decline.)

PwC acknowledges that some institutions are dealing directly with publishers for transactional licenses but observes (albeit upon incomplete data) that the transactional licensing income does not match the decline of the revenue received via Access Copyright (p.62). However, PwC neglects to point out that some publishers did not wish to do business with educational institutions. Writing in September 2013, Stephen Toope (then president of UBC) gave details of the \$25 million spent at UBC in direct transactions with copyright holders and indicated that, in connection to coursepacks, some publishers/authors refused to enter into contract for a transactional license to use works.

It has come to our attention over the last year or two that some publishers and authors have decided not to grant any transactional clearances. This is unfortunate, as this restricts faculty and students from utilizing the materials produced by the affected

publishers and authors and, it would seem, unnecessarily cuts-off a source of revenue for them. Nonetheless, this is the right of publishers and authors and, if they are not prepared to grant a transactional clearance, the material will not be used.

It should be noted that, perhaps in some effort to show neutrality, PwC offers its lens of assessment as clarifying its scope:

[We have] considered this issue in light of the economic theory of copyright protection and its counterbalance, the fair dealing exception... The theory is that, without proper regulation, prospective users could consume certain goods without paying for them (in other words, they could "free ride"), resulting in "market failure". This failure is signified by a reduction in the economic incentives to develop new creative content (p.6).

However, this invocation of loaded vocabulary invites two comments. First, the pejorative emphasis upon free ride and market failure conceals the reality that good public policy **will** aid and abet free-riders, because it is better for society as a whole. (Health care, education and public parks all come to mind—each of these is sustained through taxpayers, with varying degrees of contributions, including the option of a zero contribution.) And second, PwC seems unaware that markets themselves are of variety and will not necessarily transact in dollars and cents. Exceptions to copyright have existed for as long as copyright itself. The "market" in which creativity thrives is one which acknowledges that some goods/services will be transacted, without awareness, and without conventional payment. This is not a failure of the market; quite the reverse. Payment is in kind. Creators of today were users of yesterday, and pay their debt to the future.

PwC has lent its voice to Access Copyright's ongoing complaint that educational institutions now may enjoy for free, the modest discretionary copying that they once paid a license for. However, the real grievance for Canadian students, teachers and parents is that until now, educational institutions endorsed a system whereby fair dealing, a right given to Canadians by Parliament, was treated as a consumer item to be bought and paid for.

To PwC's credit, it is upfront in stating the limitations of the report; that PwC does not verify the accuracy of the information provided to them. Readers may wish to pay close attention to the sources from which the report was compiled (p.96); there is a distinct lack of diversity in perspective.

If this report is offered to the Copyright Board, it will be of interest to hear the Board's impressions.

Meera | August 3, 2015 at 7:20 pm | Tags: [Access Copyright](#), [education](#), [PricewaterhouseCoopers](#) | Categories:
[Uncategorized](#) | URL: <http://wp.me/pzt0h-1d2>

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McLeod, Ian W (COMMS)

From: Girouard, Christian
Sent: November-10-15 11:31 AM
To: Cantin, Lyse; McLeod, Ian W (COMMS); Gowing, Andrew
Cc: Pieters, Derrick; Robichaud, Francine; Creighan, Paula; Nevens, Lisa; Chapman, Jeffrey
Subject: RE: Media clip - News website accused of trolling (Blacklock)

Yes, we know them well.

From: Cantin, Lyse
Sent: November-10-15 11:21 AM
To: Girouard, Christian; McLeod, Ian W (COMMS); Gowing, Andrew
Cc: Pieters, Derrick; Robichaud, Francine; Creighan, Paula; Nevens, Lisa; Chapman, Jeffrey; Cantin, Lyse
Subject: Media clip - News website accused of trolling (Blacklock)

Andrew, Ian, Chris, as you will recall, I was looking for a clip from this outlet last week. Lyse

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Independent Bitmap) >>

Globe and Mail
Report on Business, Page: B1

News website accused of trolling

JAMES BRADSHAW

A slew of copyright cases brought by a small news publisher have raised questions about legal limits on sharing articles protected by paywalls, raised eyebrows among legal experts and spurred allegations of "trolling" in the courts.

Blacklock's Reporter, a subscription-only news website run by a team of four editors that covers federal government issues, won more than \$13,000 in Small Claims Court last month by arguing that the Canadian Vintners Association infringed copyright when the CVA's staff obtained an e-mailed copy of an article quoting their chief executive officer from an acquaintance of one of the group's staff who had a subscription.

But Blacklock's, of which its slogan is "Minding Ottawa's business," also has nine outstanding claims against the federal government's departments and agencies, alleging copyright infringement over articles circulated among staff. And government lawyers are fighting back, arguing that Blacklock's "is a copyright troll" that uses litigation as a "strategy for generating revenue."

The vintners decision, as a small-claims matter, won't influence future cases. But a federal ruling on the same issues could set an important precedent about policing the sharing of news articles protected by paywalls. At issue is the very right to read published material paid for by subscriptions, just as social media and other technologies have made sharing ubiquitous.

"The conclusions [in the CVA case] are counterintuitive and could have serious repercussions if they're upheld on appeal," said Howard Knopf, counsel at Macera & Jarzyna LLP who specializes in copyright law.

The dispute began in December, 2013, after Blacklock's published a story quoting testimony to a House of Commons committee by Dan Paszkowski, chief executive officer of the CVA, which represents wine producers.

Blacklock's sent the CVA a "teaser" e-mail with the headline and a few lines of text "both as a courtesy and an advisory given he had been quoted in the story," according to court documents.

Mr. Paszkowski worried the story had errors, so one of the the CVA workers asked an acquaintance who had a Blacklock's subscription to send them the full article by e-mail. Mr. Paszkowski and a colleague both received e-mailed copies and the board of directors was "made aware" of the story at its next meeting.

In court, Mr. Paszkowski likened what he did to reading a magazine in a doctor's office.

When Mr. Paszkowski contacted the publisher of Blacklock's, Holly Doan, to discuss the story, she asked how he got it. The next day, Blacklock's sent the CVA an invoice for two subscriptions costing \$157 each, the annual single-subscriber rate, and later went to court after the CVA refused to pay.

Deputy Judge Lyon Gilbert, who runs an Ottawa-based mediation and arbitration firm, dismissed the CVA's defence that it engaged in "fair dealing" for the purpose of research - a provision that also protects some uses of copyrighted works, including education and news reporting. He awarded the publisher \$11,470 in damages - the price of an institutional subscription for the CVA and its 44 members - plus interest and another \$2,000 in punitive damages.

But Prof. Teresa Scassa, the Canada Research Chair in Information Law at the University of Ottawa, said the award seems "extreme" given that only a single article was shared.

Meanwhile, Blacklock's has ongoing federal court actions against the departments of Finance, Foreign Affairs and Public Works, the Bank of Canada, Canadian Food Inspection Agency, Canadian Transportation Agency, **Canada Revenue Agency**, the Competition Bureau and the Library of Parliament. The government is contesting Blacklock's claims, in part by arguing the publisher is misusing copyright law.

None of the allegations has been proven. But once a federal court issues a decision, "that will certainly be an interesting precedent," Prof. Scassa said. It could shape what kinds of sharing breach copyright, when fair dealing is a valid defence, what counts as avoiding a digital lock and whether doing so nullifies fair dealing for future cases.

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McLeod, Ian W (COMMS)

From: Gowing, Andrew
Sent: November-10-15 12:01 PM
To: Cantin, Lyse; Girouard, Christian; McLeod, Ian W (COMMS)
Cc: Pieters, Derrick; Robichaud, Francine; Creighan, Paula; Nevens, Lisa; Chapman, Jeffrey
Subject: RE: Media clip - News website accused of trolling (Blacklock)

Yes, the article outlines perfectly the "copyright issues" that have lead us to ignore this publication as a source for media monitoring.

From: Cantin, Lyse
Sent: Tuesday, November 10, 2015 11:21 AM
To: Girouard, Christian; McLeod, Ian W (COMMS); Gowing, Andrew
Cc: Pieters, Derrick; Robichaud, Francine; Creighan, Paula; Nevens, Lisa; Chapman, Jeffrey; Cantin, Lyse
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Globe and Mail
Report on Business, Page: B1

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From: Ripley, Thomas Owen (PCH)
Sent: January-27-16 9:01 AM
To: Simard, Martin (PCH); Taylor, Lara (PCH); Qureshi, Tariq (PCH); Situ, Meng (PCH)
Subject: Fw: Liberals may explore registration system for extra copyright protection in TPP

From: Rowe, Shelley (IC/IC) <shelley.rowe@canada.ca>
Sent: Wednesday, January 27, 2016 8:52 AM
To: Ripley, Thomas Owen (PCH)
Subject: Liberals may explore registration system for extra copyright protection in TPP

Hi Owen, thought this would be of interest if you haven't seen it yet

Liberals may explore registration system for extra copyright protection in TPP

Copyright lawyers split over potential to provoke an investor challenge.

Peter Mazereeuw

Canada's government may weigh the merits of a registration system for the extra years of copyright protection required by the Trans-Pacific Partnership as part of its analysis of the deal, says David Lametti, the parliamentary secretary for Trade Minister Chrystia Freeland.

No country currently has such a system in place, though it has been proposed by copyright lawyers and the United States register of copyrights.

A registration system for the extra years of protection could ensure rights holders still get revenue from valuable works during that time, while opening up works that are no longer profitable to the public, said a handful of copyright lawyers who oppose the extended copyright protection term in the TPP.

Canada's government will sign the TPP agreement, but is not at this time committed to ratifying the deal, according to a Jan. 25 press release from Ms. Freeland's office.

The government is still prepared to explore how it could implement the TPP, including ways to address concerns raised by opponents of the deal's 20-year extension to copyright term, said Mr. Lametti.

The TPP would commit Canada to providing copyright protection for works such as songs, books, software and photographs for 70 years beyond the life of their creator. Current Canadian law provides protection 50 years beyond the life of a creator.

Critics of the TPP's 20-year copyright extension include Michael Geist, who holds the Canada Research Chair for internet and e-commerce law at the University of Ottawa, former BlackBerry co-CEO Jim Balsillie and digital rights advocacy group OpenMedia.

Mr. Lametti said there "may be ways that we can think about implementing this that would be in accordance with the treaty as negotiated but would still take some of those considerations that people have advanced, in terms of critique, into account."

"All of these are challenges of governing. And I think it's fair to say that we can address those [concerns]," said Mr. Lametti, who taught intellectual property law at McGill University prior to being elected as a Liberal MP in October.

When copyright protection expires, works become available for any member of the public or any business to use without paying royalties to the creator or company that owns the work.

Opponents of long copyright protections argue that keeping works out of the public domain for longer costs the public millions in higher payments for the work, and prevents libraries and other public institutions from making old works widely available. Supporters of longer terms argue that companies that own the rights to a work will reinvest extra profit from old works into new artists.

Mr. Lametti was highly critical last year of a move by the former Conservative government to extend copyright protections for sound performances and recordings by 20 years in the 2015 budget.

"There is no solid empirical evidence that extending the copyright protection period for another 20 years will foster the creativity in the arts that the copyright system promotes," Mr. Lametti wrote in a post to Facebook in May, 2015, prior to winning office.

Ban on 'formalities' left out of TPP on purpose: Weatherall

One possible way to address concerns over longer copyright would be to bring in a registration system-which is categorized in legal terms as a "formality"-for the extra 20 years of copyright protection provided by the TPP, said Mr. Lametti.

That idea was proposed in a recent analysis of the TPP by Australian copyright lawyer Kimberlee Weatherall. United States register of copyright Maria Pallante also proposed bringing in such a registration system as part of a reformed US copyright law during a 2013 speech at Columbia University.

A registration system is a "pretty nice solution" to the pitfalls of a blanket extension to copyright protections, said Mr. Geist.

The idea behind a registration system for the extra years of protection under the TPP is to filter out the works that are still commercially valuable more than 50 years after the creator dies from those that are not, said Ms. Weatherall.

Companies that want their old works protected for life-plus 70 years will take the time to register around year 50, in order to continue to have them protected, she said.

However, the vast majority of software programs, songs and other works are no longer very valuable after 50 years, and the rights holders for those works likely won't register. As a result, those works will become available to the public after 50 years, she said.

Many countries, including Canada, operate voluntary registration systems that make it easier to protect copyrighted works in the courts, said Mr. Knopf.

Countries including the United States have previously operated mandatory registration systems that required the renewal of a copyright, but those systems were banned under the Berne Convention on copyright, seen as the bedrock international treaty on the subject.

However, the Berne Convention only provides copyright protection for life plus 50 years.

Ms. Weatherall said it's not a coincidence that a ban on such registration systems, or formalities, was not included in the final TPP text, despite the fact that the United States has included it in some of its other recent trade agreements-for example, its 2012 trade deal with Panama, which also provides 70 years of protection.

Other TPP members may have pressed to exclude a ban on formalities, so as to allow such a registration system to be put in place, she said.

Registration system could provoke legal challenge: Knopf

Bringing in a copyright registration system could present problems for rights holders and Canada's government, said a copyright lawyer in Ottawa and a lobbyist for Canada's music publishers.

Musical works that remain in public circulation will always have some sort of commercial value, said Robert Hutton, executive director of the Canadian Music Publishers Association, which represents companies that hold the rights to many of the most valuable songs written by Canadian artists.

For example, any song that can be found on an online streaming service holds commercial value to that service, which profits from ad or subscription revenue. Rights holders should be able to share in those profits without having to jump through the hoops of registration, he argued.

The ambiguous wording of the Berne Convention could also open the door to a legal challenge to a registration system through the TPP's investor-state arbitration mechanism, said Howard Knopf, a copyright lawyer with Ottawa's Macera & Jarzyna.

The TPP text on copyright commits all parties to the Berne Convention, which bans the imposition of formalities on copyright protection. Berne does not specify whether that ban extends beyond the 50 years of protection to which it commits those countries that signed it, all of which are TPP members.

That means there is room for an argument that imposing a registration system would violate the Berne Convention and TPP text, said Mr. Knopf, who added he opposes longer copyright protections and counts Mr. Lametti as an old friend.

Ms. Weatherall and Washington-based copyright lawyer Jonathan Band agreed that imposing a registration system could open the door to an investor-state challenge, but said there was no guarantee such a challenge would succeed. Ms. Weatherall said the exclusion of a ban on formalities is "meaningful" in a legal context, and so could provide support to a government's defence of a registration system in the case of such a challenge.

Moreover, the economics of an investor-state challenge may not add up, said Mr. Band. Such cases can drain millions in legal fees from a company's pockets, whereas the extra steps of registering for an extra 20 years of protection would be relatively inexpensive, he said.

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[@PJMazereeuw](#)

Online: <http://www.embassynews.ca/news/2016/01/27/liberals-exploring-registration-system-for-extra-copyright-protection-in-tpp/48158>

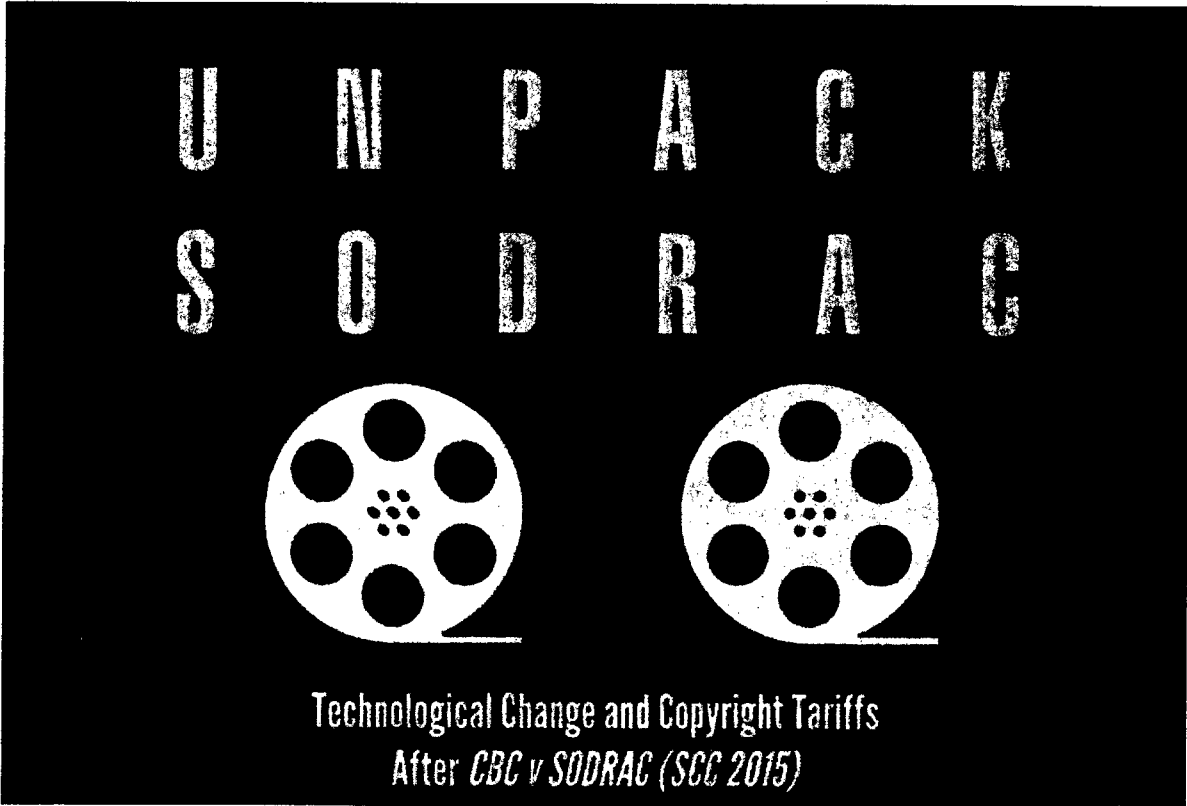
From: IP Osgoode <iposgoode@osgoode.yorku.ca>
Sent: February-19-16 2:00 PM
To: Qureshi, Tariq (PCH)
Subject: Reminder: UNPACK SODRAC Symposium - February 25, 2016

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Intellectual Property Law & Technology Program

A poster for the 'UNPACK SODRAC' symposium. The title 'UNPACK SODRAC' is written in large, white, distressed, stencil-like capital letters on a black background. Below the title are two white film reels. At the bottom of the poster, the text 'Technological Change and Copyright Tariffs' and 'After CBC v SODRAC (SCC 2015)' is written in a white serif font.

UNPACK SODRAC

Technological Change and Copyright Tariffs
After *CBC v SODRAC (SCC 2015)*

**UNPACK SODRAC: Technological Change and Copyright Tariffs after
CBC v. SODRAC (SCC 2015)**

Thursday February 25, 2016

10:30 AM - 4:30 PM

Osgoode Hall Law School, Room 1014

In the recent case of *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, 2015 SCC 57, the Supreme Court of Canada considered whether "broadcast-incidental copies" made by television broadcasters engage the exclusive right of reproduction in the *Copyright Act*, and whether broadcasters are bound by the terms of the licence approved by the Copyright Board. Split along various lines, the Court's ruling has set the course for continued controversy over the principle of "technological neutrality", the meaning of "reproduction" in the digital age, and the role of the Copyright Board in setting terms for the use of protected works. In this Symposium, leading scholars, practitioners and experts in the field will unpack the SODRAC decision and its significance for the future of Canada's copyright law.

Symposium Organizers:

Dr. Carys Craig, Associate Dean (Research & Institutional Relations), Osgoode Hall Law School
Dr. Ariel Katz, Associate Professor, Innovation Chair – Electronic Commerce, Faculty of Law, University of Toronto

Keynote:

The Honourable Mr. Marshall Rothstein

Panel 1: TECHNOLOGICAL NEUTRALITY

"Technological neutrality" has emerged in recent Supreme Court jurisprudence as a guiding principle in the application of traditional copyright law to new digital contexts. The principle has been defined in a variety of competing ways, with disagreement about its meaning and effect being the central point of departure between the majority and minority rulings in the SODRAC case. How will the SODRAC case change or inform the application of technological neutrality in copyright law, both in respect of defining rights and their limits, and in the valuation of licenses at the Copyright Board? How might the decision impact other areas of law or policy beyond copyright?

SESSION CHAIR:

Giuseppina D'Agostino Founder & Director, IP Osgoode; Associate Professor, Osgoode Hall Law School

PANELLISTS:

Carys Craig Associate Dean (Research & Institutional Relations), Osgoode Hall Law School

Gregory Hagen Associate Dean (Research) and the Director of Graduate Programs, Faculty of Law, University of Calgary

Cameron Hutchison Associate Professor, Faculty of Law, University of Alberta

Richard Pfohl General Counsel, Music Canada

Panel 2: REPRODUCTION RIGHTS

The majority ruling in the SODRAC case concluded that the Supreme Court's central holding in *Bishop v Stevens* [1990] 2 S.C.R. 467 remains sound: there is no reason, either in the subsequent jurisprudence or legislative amendments, to depart from long-standing practice of treating ephemeral copies as reproductions. In a forcefully articulated dissent, the minority described this conclusion as unreasonable and contrary to the principles of balance and technological neutrality. How should "reproduction" be understood in the digital context, where copies may no longer appear to be "material" either in form or effect? Is the holding limited to the broadcasting context? What are the potential risks and benefits of treating every copy as a copy? What bearing will the amendments in the *Copyright Modernization Act* (2012) have on the potential scope of the SODRAC ruling?

SESSION CHAIR:

Ariel Katz Associate Professor, Innovation Chair – Electronic Commerce, Faculty of Law, University of Toronto

PANELLISTS:

David Fewer Executive Director, Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC)

Veronica Syrtash VP of Legal and Business Affairs, Canadian Musical Reproduction Rights Agency (CMRRA)

Jeremy de Beer Professor, Faculty of Law, University of Ottawa

Mark Hayes Partner, Hayes eLaw LLP

Bitu Amani Associate Professor, Faculty of Law, Queen's University

Panel 3 : "MANDATORY" TARIFFS

The majority reasons established that the power of the Copyright Board to set the terms of a licence under s. 70.2 of the *Copyright Act* does not include the power to bind the parties to those terms: in the absence of clear authority that this is Parliament's intent, "the burdens of a license should not be imposed on a user who does not consent to be bound by its terms." What are the potential implications for other collective societies, copyright users, and the role of Copyright Board? Is this conclusion limited to the Board licenses established pursuant to s. 70.2, or do the reasons extend to other tariffs approved by the Board, essentially debunking the so-called "mandatory tariff" theory?

SESSION CHAIR:

Carys Craig Associate Dean (Research & Institutional Relations), Osgoode Hall Law School

PANELLISTS:

Mario Bouchard Former General Counsel, Copyright Board of Canada

Adriane Porcin Assistant Professor, Faculty of Law, University of Manitoba

Ariel Katz Associate Professor, Innovation Chair – Electronic Commerce, Faculty of Law, University of Toronto

Bobby Glushko Head, Scholarly Communications and Copyright, U of T Libraries

Howard Knopf Counsel, Macera & Jarzyna LLP

All are invited to attend. Lunch will be provided.

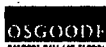
Kindly RSVP at www.iposgoode.ca/rsvp **Event Code: SODRAC**

LSUC CPD:

5.0 Substantive hours of Continuing Professional Development (CPD) can be applied for this program.

Please note that this program is not accredited for Professionalism hours.

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The Canadian Copyright Board: To Be or Not To Be – That Is A Question

ALAI CONFERENCE
OTTAWA, CANADA
May 25, 2016

HOWARD P. KNOPF

Counsel

MACERA & JARZYNA, LLP
OTTAWA, CANADA

(some of this material has appeared before on my blog and/or in presentations at Fordham
and University of Toronto)

(views are personal and not necessarily those of my firm or clients and are not legal advice)



**Pages 41 to / à 91
are withheld pursuant to section
sont retenues en vertu de l'article**

68(a)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

De : Dorion, Andre (PCH)

Envoyé : 30 mai 2016 11:34

À : Generoux, Samuel (PCH) <samuel.generoux@canada.ca>; Anghel, Radu (PCH) <radu.anghel@canada.ca>

Cc : Josée Simard2 (PCH) (josee.simard2@canada.ca) <josee.simard2@canada.ca>

Objet : Concurrence et PI - Lectures

Bonjour Samuel,

Here are the articles I mentioned during our discussion.

André

Also found this reference to the Henderson Report:

Legislation to merge the Copyright Board Applications which the Copyright Board will
with the Trade Marks Opposition Board, and begin considering before the merger comes

creating the Intellectual Property Tribunal, is into effect will not be affected. The scheduled to be introduced in Parliament in Copyright Board will continue to be 1992. The same avenues of recourse will responsible for considering any tariff and remain at the disposal of both copyright licence applications filed before that date. owners and users of their works.

Furthermore, the Tribunal will enjoy the same degree of independence and the same powers of inquiry as the Copyright Board.

The Copyright Board and its predecessor, the Copyright Appeal Board, have played an important role in Canadian society for close to 60 years. The creation of the Intellectual Property Tribunal will mark a new beginning. This measure, announced by the Minister of Finance in the Budget of 25 February 1992, follows a study of the Canadian intellectual property and litigation system conducted by Ottawa lawyer Gordon F. Henderson for the Department of Consumer and Corporate Affairs. In his report, presented in 1991, Mr. Henderson proposed the creation of *a new tribunal to deal with many aspects of intellectual property*, including the current jurisdictions of the Copyright Board and the Trade Marks Opposition Board. This tribunal *should be structured to provide a common support staff of professional and administrative personnel.*

<http://www.cb-cda.gc.ca/about-apropos/annual-annuel/1991-1992-e.pdf>

Howard also quotes it in this :

http://www.macerajarzyna.com/pages/publications/Knopf_Canadian_Copyright_Collectives_Copyright_Board_Feb2008.pdf

M^e André Dorion
SJ Patrimoine canadien/Canadian Heritage Legal
15-13 Eddy

Gatineau, QC
K1A 0M5
.819 997 7269
F 819 997 2801
andre.dorion@canada.gc.ca

s.23

From: Mandelker, Barry (PCH)
Sent: June-02-16 10:01 AM
To: Qureshi, Tariq (PCH)
Cc: Lagendyk, Jo Anne (PCH); Imbeau, Johanne (PCH); Dorion, Andre (PCH);
Leduc, Yan (PCH)
Subject: [REDACTED]

[REDACTED]

[REDACTED]

Barry Steven Mandelker
Conseiller juridique / Legal counsel
Ministère de la Justice | Department of Justice
Services juridiques | Legal Services
Ministère du Patrimoine canadien | Department of Canadian Heritage
15, rue Eddy St. (15-13-A)
Gatineau, (Québec) Canada K1A 0M5
Barry.Mandelker@pch.gc.ca
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Télécopieur | Facsimile 819-997-2801
Téléimprimeur (sans frais) | Teletypewriter 1-888-997-3123

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s.19(1)

Mongelard, Pascal (IC)


De: Troicuk, Alan (IC)
Envoyé: 30 août 2016 15:47
À: Venugopal, Sanjay (IC)
Objet: FW: Security Interests, etc.
Pièces jointes: 

From: Lajoie, Agnès: CIPO-OPIC
Sent: February-23-12 9:04 AM
To: Troicuk, Alan: LEG-DROIT; Vasudev, Scott: CIPO-OPIC
Subject: FW: Security Interests, etc.

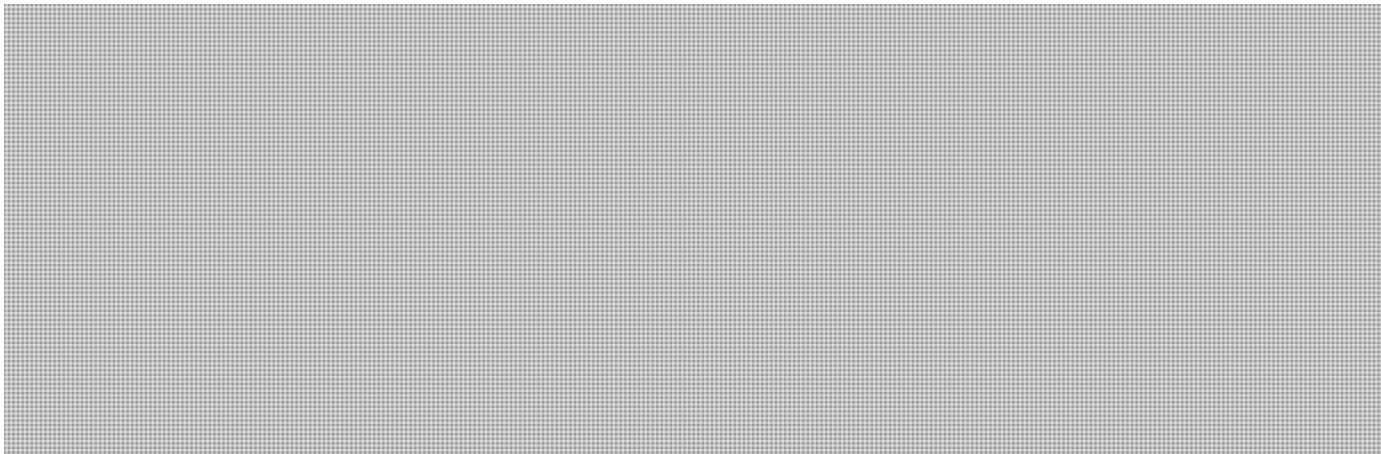
FYI

From: Laporte, Sylvain: CIPO-OPIC (NCR-RCN)
Sent: 23 février 2012 08:57
To: Lajoie, Agnès: CIPO-OPIC
Cc: Cote, Genevieve: CIPO-OPIC
Subject: FW: Security Interests, etc.

Feedback de la session avec l'IPIC...

From: 
Sent: Wednesday, February 22, 2012 6:56 PM
To: Laporte, Sylvain: CIPO-OPIC (NCR-RCN)
Subject: Security Interests, etc.

Dear Sylvain:



**Pages 97 to / à 199
are withheld pursuant to section
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19(1)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Page 200

**is withheld pursuant to sections
est retenue en vertu des articles**

19(1), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

s.19(1)

De : Dahlman, Ian (PCH)
Envoyé : 19 octobre 2016 16:58
À : Dorion, Andre (PCH) <andre.dorion@canada.ca>
Objet : [REDACTED]

Thanks again for the time today Andre. Enjoy!

Ian Dahlman

Analyste principal de politiques, Direction générale de la politique du droit d'auteur et du commerce international
Ministère du Patrimoine canadien / Gouvernement du Canada
ian.dahlman@canada.ca / 819-953-6236

Senior Policy Analyst, Copyright and International Trade Policy Branch
Department of Canadian Heritage / Government of Canada
ian.dahlman@canada.ca / Tel: 819-953-6236

From: Imbeau, Johanne (PCH)
Sent: November-02-16 8:07 AM
To: Dominique Henrie; Etienne Trepanier; Jo Anne Lagendyk; Michael Himsl;
Yan Leduc; Andre Dorion; Barry Mandelker; Tariq Qureshi; Jane Northey;
Marie-Lise Julien; Michael Keiver; Christiane Desmarais; Duncan Cameron
Subject: House and Committees

FYFI

The week ahead in the House and committees

(, The Hill Times, Date: 20161102)

Wednesday, Nov. 2

Immediately after Question Period, the House will welcome the **Rio 2016 Olympic and Paralympic athletes** to the chamber.

The House will vote on Liberal MP Alaina Lockhart's (Fundy Royal, N.B.) motion, M-39, on **immigration to Atlantic Canada**.

The House will vote at second reading on a Senate public bill sponsored in the House by Liberal MP Scott Simms (Coast of Bays-Central-Notre Dame, Nfld.), S-208, **National Seal Products Day Act**.

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The House will debate at second reading for the first time Liberal MP Colin Fraser's (West Nova, N.S.) private member's bill, C-311, An Act to Amend the Holidays Act (**Remembrance Day**).

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The House will have its sixth allotted **business of supply day**.

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The **Senate Energy, Environment, and Natural Resources Committee** will meet at 8 a.m. in room 275, East Block, to study on the effects of transitioning to a low-carbon economy. It will hear from representatives of Hydro-Québec and the Canadian Urban Transit Association.

The **Senate Internal Economy, Budgets, and Administration Committee** will meet at 8 a.m. in room 160-S, Centre Block, to consider financial and administrative matters, partially in private.

The **Joint Scrutiny of Regulations Committee** will meet at 8:30 a.m. in room 256-S, Centre Block, to review statutory instruments.

The **Senate Foreign Affairs and International Trade Committee** will meet at 10:30 a.m. in room 160-S, Centre Block, to continue its study on foreign relations and trade generally. Witnesses: Dan Breznitz, Munk Chair of Innovation Studies, University of Toronto; Todd

Evans, director of corporate research department with Export Development Canada; and Ross Hornby, VP of government affairs and policy with GE Canada.

The **Senate Banking, Trade, and Commerce Committee** will meet at 10:30 a.m. in room 9, Victoria Building, to continue studying the operation and practices of the Copyright Board of Canada. It will hear from Michael Geist, Canada Research Chair in Internet and E-commerce Law at the University of Ottawa; Howard P. Knopf, counsel, Macera & Jarzyna LLP/Moffat & Co Patent & TM Agents; the Copyright Board of Canada; among others.

The **Senate Legal and Constitutional Affairs Committee** will meet at 10:30 a.m. in room 257, East Block, to study matters pertaining to delays in Canada's criminal justice system. It will hear from the chief justice of the Court of Queen's Bench of Alberta Neil Wittmann; and Ministry of Community Safety and Correctional Services Centre of Forensic Sciences director Anthony Tessarolo.

Friday, Nov. 4

The House will debate for the first time at second reading Conservative MP Kerry Diotte's (Edmonton Griesbach, Alta.) private member's bill, C-306, **Crimean Tatar Deportation** ("Sürgünlik") Memorial Day Act.

Monday, Nov. 7

The House and Senate will **break** until the week of Nov. 14.

From: Imbeau, Johanne (PCH)

Sent: Wednesday, November 2, 2016 8:07 AM

To: Henrie, Dominique (PCH) <dominique.henrie@canada.ca>; Trepanier, Etienne (PCH) <etienne.trepanier@canada.ca>; Lagendyk, Jo Anne (PCH) <joanne.lagendyk@canada.ca>; Himsl, Michael (PCH) <michael.himsl@canada.ca>; Leduc, Yan (PCH) <yan.leduc@canada.ca>; Dorion, Andre (PCH) <andre.dorion@canada.ca>; Mandelker, Barry (PCH) <barry.mandelker@canada.ca>; Qureshi, Tariq (PCH) <tariq.qureshi@canada.ca>; Northey, Jane (PCH) <jane.northey@canada.ca>; Julien, Marie-Lise (PCH) <marie-lise.julien@canada.ca>; Keiver, Michael (PCH) <michael.keiver@canada.ca>; Desmarais, Christiane (PCH) <christiane.desmarais@canada.ca>; Cameron, Duncan (PCH) <duncan.cameron@canada.ca>

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(, The Hill Times, Date: 20161102)

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The **House Public Safety and National Security** will meet 3:30-5:30 p.m., room 306, Valour Building (151 Sparks St.), on Bill C-22, An Act to Establish the National Security and Intelligence Committee of Parliamentarians. Witnesses: University of Ottawa professors Wesley Wark and Craig Forcese, York University professor Ron Atkey, and University of Toronto professor Kent Roach (by teleconference).

The **Senate Energy, Environment, and Natural Resources Committee** will meet at 8 a.m. in room 275, East Block, to study on the effects of transitioning to a low-carbon

economy. It will hear from representatives of Hydro-Québec and the Canadian Urban Transit Association.

The **Senate Internal Economy, Budgets, and Administration Committee** will meet at 8 a.m. in room 160-S, Centre Block, to consider financial and administrative matters, partially in private.

The **Joint Scrutiny of Regulations Committee** will meet at 8:30 a.m. in room 256-S, Centre Block, to review statutory instruments.

The **Senate Foreign Affairs and International Trade Committee** will meet at 10:30 a.m. in room 160-S, Centre Block, to continue its study on foreign relations and trade generally. Witnesses: Dan Breznitz, Munk Chair of Innovation Studies, University of Toronto; Todd Evans, director of corporate research department with Export Development Canada; and Ross Hornby, VP of government affairs and policy with GE Canada.

The **Senate Banking, Trade, and Commerce Committee** will meet at 10:30 a.m. in room 9, Victoria Building, to continue studying the operation and practices of the Copyright Board of Canada. It will hear from Michael Geist, Canada Research Chair in Internet and E-commerce Law at the University of Ottawa; Howard P. Knopf, counsel, Macera & Jarzyna LLP/Moffat & Co Patent & TM Agents; the Copyright Board of Canada; among others.

The **Senate Legal and Constitutional Affairs Committee** will meet at 10:30 a.m. in room 257, East Block, to study matters pertaining to delays in Canada's criminal justice system. It will hear from the chief justice of the Court of Queen's Bench of Alberta Neil Wittmann; and Ministry of Community Safety and Correctional Services Centre of Forensic Sciences director Anthony Tessarolo.

Friday, Nov. 4

The House will debate for the first time at second reading Conservative MP Kerry Diotte's (Edmonton Griesbach, Alta.) private member's bill, C-306, **Crimean Tatar Deportation** ("Sürgünlik") Memorial Day Act.

Monday, Nov. 7

The House and Senate will **break** until the week of Nov. 14.

From: Fair Duty [mailto:comment-reply@wordpress.com]
Sent: Tuesday, November 15, 2016 11:47 PM
To: Mandelker, Barry (PCH) <barry.mandelker@canada.ca>
Subject: [New post] Blacklock's Reporter, the stories within the story

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New post on Fair Duty



Blacklock's Reporter, the stories within the story by Meera

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Briefly, the two articles were read by Sandra Marsden, President of the Canada Sugar Institute, through her own subscription to *Blacklock's Reporter*. She subsequently shared the content with Patrick Halley of the International Trade Policy Division of the Federal Government, who in turn passed the articles on to five other staff members. Throughout, their concern was the manner in which information provided by Marsden and Stéphanie Rubec (a government media relations officer) was used and not used, respectively.

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Justice Barnes did not address the allegation of trolling but did remark that "there are certainly some troubling aspects to Blacklock's business practices (para. 22)." These aspects are described by Graeme C. Gordon on Day 4 of the trial:

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From: Mandelker, Barry (PCH)
Sent: November-16-16 11:24 AM
To: Dorion, Andre (PCH); Qureshi, Tariq (PCH); Imbeau, Johanne (PCH); Keiver, Michael (PCH); Lagendyk, Jo Anne (PCH); Himsl, Michael (PCH); Northey, Jane (PCH); Henrie, Dominique (PCH); Trepanier, Etienne (PCH); Julien, Marie-Lise (PCH); Desmarais, Christiane (PCH)
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From: Northey, Jane (PCH)
Sent: November-16-16 11:41 AM s.23
To: Mandelker, Barry (PCH)
Subject: RE: [New post] Blacklock's Reporter, the stories within the story

Thanks Barry.

Jane Northey

Conseillère juridique | Legal Counsel
Ministère de la Justice Canada | Department of Justice Canada
Patrimoine canadien, services juridiques | Legal Services, Canadian Heritage
15, rue Eddy St., 15-13-A
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jane.northey@canada.ca

FILE/DOSSIER:
PROTECTED – SOLICITOR CLIENT PRIVILEGE/PROTÉGÉE – SECRET PROFESSIONEL

From: Mandelker, Barry (PCH)
Sent: November-16-16 11:24 AM
To: Dorion, Andre (PCH) <andre.dorion@canada.ca>; Qureshi, Tariq (PCH) <tariq.qureshi@canada.ca>; Imbeau, Johanne (PCH) <johanne.imbeau@canada.ca>; Keiver, Michael (PCH) <michael.keiver@canada.ca>; Lagendyk, Jo Anne (PCH) <joanne.lagendyk@canada.ca>; Himsl, Michael (PCH) <michael.himsl@canada.ca>; Northey, Jane (PCH) <jane.northey@canada.ca>; Henrie, Dominique (PCH) <dominique.henrie@canada.ca>; Trepanier, Etienne (PCH) <etienne.trepanier@canada.ca>; Julien, Marie-Lise (PCH) <marie-lise.julien@canada.ca>; Desmarais, Christiane (PCH) <christiane.desmarais@canada.ca>
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In his analysis of the unauthorized use, Justice Barnes begins with the observation that fair dealing "is a well-recognized right under the Act (para. 24)," and later confirms that neither copyright owners nor copyright users are permitted to pick and choose which parts of the system of copyright they will adhere to: "Absent consent, subscribers and downstream users are subject to the obligations imposed upon them by the [Copyright] Act. But at the same time they enjoy considerable protection afforded to them under the statutory fair dealing provisions (para. 44)."

And, with what might be my favorite remark, Justice Barnes firmly rejects the all-too-often asserted claim that every use of a copyrighted work represents lost income and thus must be compensated for:

It also goes without saying that whatever business model Blacklock's employs it is always subject to the fair dealing rights of third parties. To put it another way, Blacklock's is not entitled to special treatment because its financial interests may be adversely affected by the fair use of its material (para 45).

Readers may be curious, as I was, about the ancestry of the Blacklock in *Blacklock's Reporter*. The news site takes its name from the late Thomas H. Blacklock (1873-1934), a revered member of the press from a bygone era. His career as a journalist including writing for multiple organizations within Canada as well as covering WWI. Respected by colleagues and readers alike, he was one of Canada's best political correspondents of the early 20th century. At the time of Blacklock's death, Prime Minister Robert Borden recounted this story:

In one of the campaigns when Mr. Meighen and Mr. King were rivals, they engaged in long-range verbal hostilities that were rather ineffective on both sides. Blacklock became impatient and wrote to Meighen a letter which Tom afterwards showed to me. It was keenly critical of the course

Meighen was pursuing; and I recall one phrase which ran something like this: 'Please bear in mind that the people of Canada are not in the least interested in your opinion of Mr. King or in Mr. King's opinion of you.' Meighen took the letter in very good part; and showed it to several of his friends.

...

[Blacklock] was a rare spirit, and his memory will not pass from those who knew him best.

- Sir Robert Laird Borden, Letters to Limbo, University of Toronto Press (1972)

The Right Honorable Arthur Meighen spoke at Blacklock's funeral, saying "there would be few citizens of Canada ... whose passing would leave behind so many to speak well of their life and work (*The Border Cities Star*, 6 August 1934)."

During the trial *Blacklock's Reporter* argued that, in order to sustain its operations, it was essential to aggressively police its copyright. Be that as it may, if aggression means misrepresenting facts in order to mount a sting operation, the organization ought to consider changing to a more appropriate name, one without the baggage of ethics and civility.

Commentaries on this decision abound; see [Teresa Scassa](#), [Howard Knopf](#), [Michael Geist](#), [Adam Jacobs](#). But CIPPIC shall get the last word: **"The decision represents a solid affirmation of fair dealing rights, and one that should serve to deter copyright trolls from bringing meritless claims against obvious fair dealing practices in the future."**

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Meera | November 15, 2016 at 8:46 pm | Tags: [Blacklock's Reporter](#), [fair dealing](#), [right to read](#), [Thomas Blacklock](#) | Categories: [Posts](#) | URL: <http://wp.me/pztoh-1lc>

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From: Northey, Jane (PCH)
Sent: November-16-16 12:32 PM
To: Mueller, Jennifer (PCH)
Subject: RE: [New post] Blacklock's Reporter, the stories within the story

I don't see why not. I suspect she would find it of interest.

Jane Northey

Conseillère juridique | Legal Counsel
Ministère de la Justice Canada | Department of Justice Canada
Patrimoine canadien, services juridiques | Legal Services, Canadian Heritage
15, rue Eddy St., 15-13-A
Gatineau, (Québec) K1A 0M5
tel. | tél.: (819) 997-2151
jane.northey@canada.ca

FILE/DOSSIER:
PROTECTED – SOLICITOR CLIENT PRIVILEGE/PROTÉGÉE – SECRET PROFESSIONNEL

From: Mueller, Jennifer (PCH)
Sent: November-16-16 11:45 AM
To: Northey, Jane (PCH) <jane.northey@canada.ca>
Subject: RE: [New post] Blacklock's Reporter, the stories within the story

This is most interesting. Thanks Jane.

Can I forward to Carolé Grenier in Communications? ;)

J

Jennifer Mueller

Agente principale, Politiques et législation du patrimoine
Direction des politiques et programmes du patrimoine
Ministère du Patrimoine canadien, Gouvernement du Canada
25, rue Eddy, 9ième étage, pièce 84, Gatineau (Québec) K1A 0M5
Jennifer.Mueller@canada.ca / Tél. 819-997-7982 / Sans Frais 866-811-0055

Jennifer Mueller

Senior Officer, Heritage Policy and Legislation
Heritage Policy and Programs Branch
Department of Canadian Heritage, Government of Canada
25 Eddy St., 9th floor, room 84, Gatineau, Quebec, CANADA K1A 0M5
Jennifer.Mueller@canada.ca / Tel. 819-997-7982 / Toll Free 866-811-0055

From: Northey, Jane (PCH)
Sent: Wednesday, November 16, 2016 11:42 AM
To: Zedde, Kathryn (PCH) <kathryn.zedde@canada.ca>; Mueller, Jennifer (PCH) <jennifer.mueller@canada.ca>
Subject: FW: [New post] Blacklock's Reporter, the stories within the story

FYI

Jane Northey

Conseillère juridique | Legal Counsel
Ministère de la Justice Canada | Department of Justice Canada
Patrimoine canadien, services juridiques | Legal Services, Canadian Heritage
15, rue Eddy St., 15-13-A
Gatineau, (Québec) K1A 0M5
tel. | tél.: (819) 997-2151
jane.northey@canada.ca

Meera posted: "On 10 November 2016, Justice Barnes of the Federal Court released his decision for *Blacklock's Reporter v. Canada (A. G.)*, a case involving unauthorized circulation of two news articles among a handful of staff members working within the Federal Government"

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New post on Fair Duty



Blacklock's Reporter, the stories within the story

by [Meera](#)

On 10 November 2016, Justice Barnes of the Federal Court released his decision for *Blacklock's Reporter v. Canada (A. G.)*, a case involving unauthorized circulation of two news articles among a handful of staff members working within the Federal Government. The articles had been legitimately obtained via an individual subscription to the site *Blacklock's Reporter* but the copyright owners claimed that the subsequent downstream uses were infringement. Justice Barnes disagreed, and declared fair dealing. "There is no question that the circulation of this news copy within the Department was done for a proper research purpose. There is also no question that the admitted scope of use was, in the circumstances, fair (para 33)."

Briefly, the two articles were read by Sandra Marsden, President of the Canada Sugar Institute, through her own subscription to *Blacklock's Reporter*. She subsequently shared the content with Patrick Halley of the International Trade Policy Division of the Federal Government, who in turn passed the articles on to five other staff members. Throughout, their concern was the manner in which information provided by Marsden and Stéphanie Rubec (a government media relations officer) was used and not used, respectively.

In the eyes of the copyright owners, the sharing by Ms. Marsden, and the subsequent sharing within the department, were a violation of the terms and conditions governing the use of the news service. In the claim, *Blacklock's Reporter* sought compensation, not by way of six individual subscriptions (each priced

at \$148), but via a department-wide site license of \$17,209. At the end of the day though, Justice Barnes was more than satisfied that the discrete sharing of articles was reasonable; it was fair dealing.

The decision handed down contains a few gems. One in particular is weighty in its simplicity: **"The act of reading, by itself, is an exercise that will almost always constitute fair dealing even when it is carried out solely for personal enlightenment or entertainment (para. 36)."**

The decision is well-written and straightforward; it brings to mind the comments of James Grimmelmann (Professor of Law, University of Maryland) after an American appeals' court supported the HathiTrust initiative: "The [decision] is sober, conservative, and to the point; it is the work of a court that does not think this is a hard case." The same could be said of Justice Barnes' work. Indeed, during the trial, Graeme C. Gordon of *Loonie Politics* quotes Barnes as saying, "I don't think this case is as profound as you and others made it out to be."

But what might be routine in the hands of Justice Barnes is scarcely so for readers. Particularly given the detailed commentary provided during the trial by Graeme C. Gordon of *Loonie Politics* (Day One begins here) and the Centre for Internet Policy and Public Interest Clinic (CIPPIC's complete summary is here). Emotions on the side of *Blacklock's Reporter* ran high--a naked hostility to fair dealing is evident. While that in itself is not surprising, the degree to which the Federal Government was targeted as a private market, is.

In fairness to *Blacklock's Reporter*, such action did not appear to be a part of their initial business model. When the owners put up their shingle in 2012, they did so with noble aspirations—to return to the days when "newspapers were run by journalists for citizens," with the aim of providing serious news about the functioning of government. At the time, writing for the Tyee, Shannon Rupp observed the goal as being a return to the "old-fashioned business model [when] newspapers were part of their community and their links with the audience were authentic, involving a mutual loyalty that served to maintain readership."

Returning to the case in hand; news of this dispute was first brought to our attention by Teresa Scassa in August when she described the extent of litigation being brought forward by the news site:

[lawsuits are pending against] a total of 7 federal government departments and agencies and 3 Crown corporations and agencies. Blacklock's provides articles on a subscription basis only; it accuses the various defendants of having accessed copies of its articles without having subscribed to the service and in breach of their copyrights. The defendants argue that Blacklock's "employs a pattern of writing misleading or inaccurate articles about an organization with the expectation that these articles would be accessed and shared internally." They then allege that Blacklock's files access to information requests to uncover details of such access and distribution in order to issue claims for damages for copyright infringement. Essentially, they contend that Blacklock's is engaged in copyright trolling.

Justice Barnes did not address the allegation of trolling but did remark that "there are certainly some troubling aspects to Blacklock's business practices (para. 22)." These aspects are described by Graeme C. Gordon on Day 4 of the trial:

... there were two witnesses — one from Canadian Museum of History and the other from Canadian Mortgage and Housing Corporation — who both gave testimony of their poor experiences with Blacklock's. One of the witnesses said she felt "sort of duped into creating this situation." She also said Koski "didn't seem to be accepting the answers that I was giving him" and that he wrote negative articles that were "misleading" and "misrepresenting" of facts.

CIPPIC indicates that the Museum of History and the Mortgage and Housing Corporation each acquiesced to demands for a \$12,000 fee rather than face a legal challenge. CIPPIC also draws attention to the unwillingness of *Blacklock's Reporter* to include a comment sent by a staff member in connection to the sugar tax story, before the article was posted:

Ms. Rubec stated that she had spent hours providing a comment only to be told Blacklock's would print that the Department had provided "no comment", she had followed up with an email the evening prior to publication, and still the article was not updated when it went live the following morning. She testified that she had been "frustrated" by the exchange.

Justice Barnes addresses this point and adds a footnote that must not be missed: "Notwithstanding Ms. Rubec's several on-the-record responses, [the article] improperly attributed "no comment" to the Defendant. This is a practice Mr. Korski adopts when he does not accept or approve of the answers he is given from a source; see Exhibits ... and confirmed by Mr. Korski's testimony (para.9 / footnote 1)".

Returning to the dispute itself, Justice Barnes brings much-needed clarity to the manner in which terms and conditions, when unilaterally imposed upon consumers, must be interpreted:

As the drafter of [its stipulated terms and conditions], Blacklock's is bound to the interpretation most favourable to the users of its copy which, in this case, permitted Ms. Marsden's distribution to the Department for a non-commercial purpose, and by implication, permitted a similar use by Mr. Halley (para. 43).

In his analysis of the unauthorized use, Justice Barnes begins with the observation that fair dealing "is a well-recognized right under the Act (para. 24)," and later confirms that neither copyright owners nor copyright users are permitted to pick and choose which parts of the system of copyright they will adhere to: "Absent consent, subscribers and downstream users are subject to the obligations imposed upon them by the [Copyright] Act. But at the same time they enjoy considerable protection afforded to them under the statutory fair dealing provisions (para. 44)."

And, with what might be my favorite remark, Justice Barnes firmly rejects the all-too-often asserted claim that every use of a copyrighted work represents lost income and thus must be compensated for:

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Readers may be curious, as I was, about the ancestry of the Blacklock in *Blacklock's Reporter*. The news site takes its name from the late Thomas H. Blacklock (1873-1934), a revered member of the press from a bygone era. His career as a journalist including writing for multiple organizations within Canada as well as covering WWI. Respected by colleagues and readers alike, he was one of Canada's best political correspondents of the early 20th century. At the time of Blacklock's death, Prime Minister Robert Borden recounted this story:

In one of the campaigns when Mr. Meighen and Mr. King were rivals, they engaged in long-range verbal hostilities that were rather ineffective on both sides. Blacklock became impatient and wrote to Meighen a letter which Tom afterwards showed to me. It was keenly critical of the course Meighen was pursuing; and I recall one phrase which ran something like this: 'Please bear in mind that the people of Canada are not in the least interested in your opinion of Mr. King or in Mr. King's opinion of you.' Meighen took the letter in very good part; and showed it to several of his friends.

...

[Blacklock] was a rare spirit, and his memory will not pass from those who knew him best.

- Sir Robert Laird Borden, Letters to Limbo, University of Toronto Press (1972)

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During the trial *Blacklock's Reporter* argued that, in order to sustain its operations, it was essential to aggressively police its copyright. Be that as it may, if aggression means misrepresenting facts in order to mount a sting operation, the organization ought to consider changing to a more appropriate name, one without the baggage of ethics and civility.

Commentaries on this decision abound; see [Teresa Scassa](#), [Howard Knopf](#), [Michael Geist](#), [Adam Jacobs](#). But CIPPIC shall get the last word: **"The decision represents a solid affirmation of fair dealing rights, and one that should serve to deter copyright trolls from bringing meritless claims against obvious fair dealing practices in the future."**

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s.23

McLeod, Ian W (COMMS)

From: McLeod, Ian W (COMMS)
Sent: December-28-16 1:30 PM
To: Lawrence, Catherine; Kaufman, Alex; Prefontaine, Alain
Subject: RE: [REDACTED]

Excellent. Thanks!

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Lawrence, Catherine
Sent: December-28-16 1:30 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>;
Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Subject: RE: [REDACTED]

[REDACTED] Thanks.

From: McLeod, Ian W (COMMS)
Sent: December-28-16 1:19 PM
To: Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Cc: Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>
Subject: RE: [REDACTED]

Thanks.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Kaufman, Alex
Sent: December-28-16 1:19 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Cc: Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>
Subject: RE: [REDACTED]

I believe Alain is away – I am cc'ing Catherine.

s.19(1)

s.23

From: McLeod, Ian W (COMMS)
Sent: December-28-16 1:10 PM
To: Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Subject: RE: [REDACTED]

Thanks (sorry, got sidetracked). Will move this now (unless you have any concerns, Alain).

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Kaufman, Alex
Sent: December-28-16 11:01 AM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Subject: RE: [REDACTED]

No concerns.

A.

From: McLeod, Ian W (COMMS)
Sent: December-28-16 10:58 AM
To: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>
Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>
Subject: RE: [REDACTED]

Good morning,

[REDACTED]

Thanks,
Ian

s.23

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: McLeod, Ian W (COMMS)
Sent: December-23-16 2:25 PM
To: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>
Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>
Subject: RE: [REDACTED]

Thanks all.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Prefontaine, Alain
Sent: December-23-16 2:25 PM
To: Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>
Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>
Subject: RE: [REDACTED]

Alain Préfontaine
Directeur général et avocat général principal | Director General and Senior General Counsel
Contentieux des affaires civiles | Civil Litigation Section
Ministère de la Justice Canada | Department of Justice Canada
50, rue O'Connor, pièce 530 | 50 O'Connor Street, room 530
Ottawa, ON K1A 0H8
aprefontaine@justice.gc.ca
Téléphone | Telephone (613) 670-6257
Télécopieur | Facsimile (613) 954-1920
Gouvernement du Canada | Government of Canada

De : Kaufman, Alex
Envoyé : Friday, December 23, 2016 2:24 PM
À : McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>

Cc : * NLS ADAGO <LitBranchADAGO@justice.gc.ca>

Objet : RE: [REDACTED]

s.19(1)

[REDACTED] s.23

From: McLeod, Ian W (COMMS)

Sent: December-23-16 2:21 PM

To: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>

Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>

Subject: RE: [REDACTED]

Perfect. Thanks.

Ian McLeod

Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Prefontaine, Alain

Sent: December-23-16 2:21 PM

To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>

Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>

Subject: RE: [REDACTED]

Alain Préfontaine

Directeur général et avocat général principal | Director General and Senior General Counsel

Contentieux des affaires civiles | Civil Litigation Section

Ministère de la Justice Canada | Department of Justice Canada

50, rue O'Connor, pièce 530 | 50 O'Connor Street, room 530

Ottawa, ON K1A 0H8

aprefontaine@justice.gc.ca

Téléphone | Telephone (613) 670-6257

Télécopieur | Facsimile (613) 954-1920

Gouvernement du Canada | Government of Canada

De : McLeod, Ian W (COMMS)

Envoyé : Friday, December 23, 2016 2:19 PM

À : Demeter, Tracey <Tracey.Demeter@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>

Cc : * NLS ADAGO <LitBranchADAGO@justice.gc.ca>

Objet : RE: [REDACTED]

Hi there,

[REDACTED]

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Demeter, Tracey

Sent: December-23-16 1:25 PM

To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>

Cc: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; * NLS ADAGO <LitBranchADAGO@justice.gc.ca>

Subject: RE: [REDACTED]

Hi Ian,

[REDACTED]

Thank you and happy holidays,

* Please remember to use our office group email address when sending updates or requests for information:

LitBranchADAGO@justice.gc.ca

Tracey Demeter

Paralegal | Parajuriste

Office of the Assistant Deputy Attorney General | Bureau du sous-procureur général adjoint

National Litigation Sector | Secteur national du contentieux

Department of Justice | Ministère de la justice

50 rue O'Connor Street, Suite 600

Ottawa, (Ontario) Canada K1A 0H8

tracey.demeter@justice.gc.ca

Telephone | Téléphone 613-288-5074 / Facsimile | Télécopieur 613-954-1920
Government of Canada | Gouvernement du Canada

s.19(1)

s.23

From: McLeod, Ian W (COMMS)
Sent: December 23, 2016 12:57 PM
To: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>
Subject: [REDACTED]

Good afternoon,

[REDACTED]

Deadline: today

Thanks,
Ian

Ian McLeod
A/Manager, Media Relations and Litigation Communications | Gestionnaire p.i., relations avec les médias et communications liées aux contentieux
Strategic Communications | Communications stratégiques
Communications Branch | Direction des communications
Department of Justice Canada | Ministère de la Justice du Canada
iwmcleod@justice.gc.ca
Telephone | Téléphone 613-617-8327
Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

**Pages 237 to / à 238
are withheld pursuant to sections
sont retenues en vertu des articles**

19(1), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Page 239

**is withheld pursuant to section
est retenue en vertu de l'article**

23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

s.19(1)

s.23

McLeod, Ian W (COMMS)

From: Leclerc, Caroline
Sent: December-28-16 2:30 PM
To: McLeod, Ian W (COMMS); Filion, Marie-Claude; Leclerc, Caroline
Cc: De Mora, Joe
Subject: Re: [REDACTED]

Hi Ian,

[REDACTED]

Merci,
Caroline

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: McLeod, Ian W (COMMS)
Envoyé: mercredi 28 décembre 2016 13:59
À: Filion, Marie-Claude; Leclerc, Caroline
Cc: De Mora, Joe
Objet: RE: [REDACTED]

Good afternoon,

[REDACTED]

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Filion, Marie-Claude
Sent: December-23-16 4:34 PM
To: Leclerc, Caroline <Caroline.Leclerc@justice.gc.ca>; McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Leclerc,

s.23

Caroline <Caroline.Leclerc@justice.gc.ca>

Cc: Off, Shirley Anne <ShirleyAnne.Off@justice.gc.ca>; De Mora, Joe <Joe.DeMora@justice.gc.ca>

Subject: Re: [REDACTED]

Hi,

[REDACTED]

Thank you.

Marie-Claude

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Leclerc, Caroline

Sent: Friday, December 23, 2016 4:13 PM

To: McLeod, Ian W (COMMS); Leclerc, Caroline

Cc: Off, Shirley Anne; De Mora, Joe; Filion, Marie-Claude

Subject: Re: [REDACTED]

Ok, thanks.

[REDACTED]

Merci,
Caroline

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: McLeod, Ian W (COMMS)

Envoyé: vendredi 23 décembre 2016 15:42

À: Leclerc, Caroline

Cc: Off, Shirley Anne; De Mora, Joe

Objet: RE: [REDACTED]

Hi Caroline,

[REDACTED]

Thanks,
Ian

Ian McLeod

Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Leclerc, Caroline

Sent: December-23-16 3:37 PM

To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Leclerc, Caroline <Caroline.Leclerc@justice.gc.ca>
Cc: Off, Shirley Anne <ShirleyAnne.Off@justice.gc.ca>; De Mora, Joe <Joe.DeMora@justice.gc.ca>
Subject: Re: [REDACTED]

Hi Ian,

[REDACTED]

Merci,
Caroline

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: McLeod, Ian W (COMMS)
Envoyé: vendredi 23 décembre 2016 14:43
À: Leclerc, Caroline
Cc: Off, Shirley Anne; De Mora, Joe
Objet: [REDACTED]

Hi Caroline,

[REDACTED]

Thanks,
Ian

Ian McLeod

A/Manager, Media Relations and Litigation Communications | Gestionnaire p.i., relations avec les médias et communications liées aux contentieux

Strategic Communications | Communications stratégiques

Communications Branch | Direction des communications

Department of Justice Canada | Ministère de la Justice du Canada

iwmcLeod@justice.gc.ca

Telephone | Téléphone 613-617-8327

Facsimile | Télécopieur 613-954-0811

Government of Canada | Gouvernement du Canada

McLeod, Ian W (COMMS)

From: Media-Relations-Medias
Sent: December-28-16 2:31 PM
To: 'Tom Korski'
Subject: RE: a reporter

s.19(1)

Hi Tom,

Yes, [REDACTED] was provided with a copy of the decision by Justice counsel upon request. As I mentioned on Friday, once a decision has been released by the Court, it becomes a public document and it would have been available through the courts.

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]
Sent: December-27-16 10:39 AM
To: Media-Relations-Medias <media@justice.gc.ca>
Subject: Re: a reporter

Dear Ian: thank you; yes, we checked with Federal Court. Nobody asked for it there. I note that same day, December 21, at 3:51 pm a local amateur blogger named [REDACTED] published a fulsome account of the decision. This was three minutes before the Globe Tweet. Did the Attorney General's department also email the decision to the blogger? My deadline is Thursday.

Regards
Tom

On Fri, Dec 23, 2016 at 6:01 PM, Media-Relations-Medias <media@justice.gc.ca> wrote:

Hi Tom,

Once a decision has been released by the Court, it becomes a public document. Mr. Kaufman provided the material to [REDACTED] upon request later in the afternoon of December 21, after the court had provided it to the relevant parties via email. This document would also have been available through the Courts Administration Service.

Thanks,
Ian

Ian McLeod

s.19(1)

Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]

Sent: Friday, December 23, 2016 12:49 PM

To: Media-Relations-Medias <media@justice.gc.ca>; [REDACTED] /@globeandmail.com>

Subject: a reporter

Hello: my question follows.

On December 21 at 1:33 pm Courts Administration emailed a judgment in case no. T-1391-14 to three people: my counsel, and Alex Kaufman and Orlagh O'Kelly of the Department of Justice.

The judgment at this writing remains unavailable to the general public on Canlii or the Federal Court website.

Our counsel was in meetings all afternoon; I did not see the Dec. 21 judgment until 5:54 pm.

However at 3:54 pm [REDACTED] of the Globe & Mail tweeted, "Federal Court orders Blacklock's Reporter to pay \$65,000 in costs after losing case claiming copyright breach."

My question: did any person at the Department of Justice forward an electronic copy of the judgment or any summary of it to any person by any method from the time of its issue, 1:33 pm, and the time of [REDACTED] tweet, 3:54 pm? And if so, who, to whom, and when?

Deadline's today.

Regards

Tom Korski

s.19(1)

McLeod, Ian W (COMMS)

From: McLeod, Ian W (COMMS)
Sent: December-28-16 5:12 PM
To: Bernard, Johanne; Bickert, Geoffrey; Bisson, Louise; Blanchard, Joanne; Eid, Elisabeth; Hassan, Sandra; Lovett, Lynn; McCurry, Pam; Pentney, William; Piragoff, Donald; Saranchuk, Andrew; Thivierge, Marie-Josée; Wright, Laurie; Yazar, Inanc; [REDACTED];
* CB - Comms Branch NCR and Regions / CB-Direction des communications RCN et régions; Morrison, Whitney; Couto, Francisco; [REDACTED]; 'Christine.O'Nions@pco-bcp.gc.ca'; Rudick, Catherine; Drouin, Nathalie G. (AssocDM/SMD); Giroux, Francois (MO)
Cc: Akerley, Marj; Bindman, Stephen; Gauthier, Julie; Kikuchi, Elizabeth; Legault, Yanike; Taschereau, Alexia; van Dieen, Jodie; Picard, Mariane C.; Patry, Claudine; Leclerc, Caroline; Off, Shirley Anne; 'line.quenneville@pco-bcp.gc.ca'; 'Morrell, Daryl'; 'Lindblad, Anabel'
Subject: Daily media call report / Rapport quotidien des appels médiatiques (12/28/2016)

The attached e-mail may contain personal information and should therefore not be distributed further, except on a "need-to-know" basis.

Ce courriel pourrait contenir des renseignements personnels et ne devrait pas être redistribué, sauf s'il est vraiment nécessaire qu'un tiers en prenne connaissance.

Today's calls:

1.

Reporter: Tom Korski, Blacklock's Reporter

Question: (follow-up to December 23 request) thank you; yes, we checked with Federal Court. Nobody asked for it there. I note that same day, December 21, at 3:51 pm a local amateur blogger named [REDACTED] published a fulsome account of the decision. This was three minutes before the Globe Tweet. Did the Attorney General's department also email the decision to the blogger?

Response: Yes, [REDACTED] was provided with a copy of the decision by Justice counsel upon request. As I mentioned on Friday, once a decision has been released by the Court, it becomes a public document and it would have been available through the courts.

Received: 10:39 AM, December 27

Completed: 2:31 PM

Call received by: Ian McLeod

2.

Reporter: [REDACTED] Halifax Chronicle-Herald

Question: I have been searching and waiting for information on the extradition of accused killer [REDACTED] Is it possible to have this set up so I can be alerted when there's movement on the file? Rather than me emailing and calling to bother every few weeks or so?

Response: As we mentioned in September, [REDACTED] and the timelines for proceedings are largely determined by processes in the country in question. As such, we are unable to provide any further information at this time.

Received: 1:36 PM

Completed: 3:31 PM

Call received by: Ian McLeod

Calls Pending:

None/Aucun

Ian McLeod

Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

s.19(1)

McLeod, Ian W (COMMS)

From: McLeod, Ian W (COMMS)
Sent: December-29-16 1:10 PM
To: De Mora, Joe
Subject: RE: a reporter

Will do.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: De Mora, Joe
Sent: December-29-16 1:06 PM
To: Media-Relations-Medias <media@justice.gc.ca>
Subject: Re: a reporter

Tks Ian. Please make sure that MO and DMO get a head's up.
Joe

From: Media-Relations-Medias
Sent: Thursday, December 29, 2016 12:46 PM
To: De Mora, Joe
Subject: FW: a reporter

FYI – note that he included [REDACTED]

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]
Sent: December-29-16 12:35 PM
To: Media-Relations-Medias <media@justice.gc.ca>; [REDACTED]@globeandmail.com>
Subject: Re: a reporter

Dear Ian: thank you for your note. Public, unpublished: I'll explain the distinction later.
The problem: the Attorney General is leaking an unpublished decision to her little government lip-readers on the same afternoon some Court Administration Services official is editing Blacklock's Wikipedia page. This doesn't look like public business. It looks like score settling by Crown employees. It has a whiff of Zimbabwe about it. You know this is bound to be raised in a Commons scrum with the Attorney General. Our story runs Jan. 3. It will be unlocked.

Regards
Tom

On Wed, Dec 28, 2016 at 2:31 PM, Media-Relations-Medias <media@justice.gc.ca> wrote:

s.19(1)

Hi Tom,

Yes, [REDACTED] was provided with a copy of the decision by Justice counsel upon request. As I mentioned on Friday, once a decision has been released by the Court, it becomes a public document and it would have been available through the courts.

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]
Sent: December-27-16 10:39 AM
To: Media-Relations-Medias <media@justice.gc.ca>
Subject: Re: a reporter

Dear Ian: thank you; yes, we checked with Federal Court. Nobody asked for it there.
I note that same day, December 21, at 3:51 pm a local amateur blogger named [REDACTED] published a fulsome account of the decision. This was three minutes before the Globe Tweet. Did the Attorney General's department also email the decision to the blogger? My deadline is Thursday.

Regards
Tom

On Fri, Dec 23, 2016 at 6:01 PM, Media-Relations-Medias <media@justice.gc.ca> wrote:

Hi Tom,

Once a decision has been released by the Court, it becomes a public document. Mr. Kaufman provided the material to [REDACTED] upon request later in the afternoon of December 21, after the court had provided it to the relevant parties via email. This document would also have been available through the Courts Administration Service.

Thanks,
Ian

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]
Sent: Friday, December 23, 2016 12:49 PM
To: Media-Relations-Medias <media@justice.gc.ca>; [REDACTED] <[\[REDACTED\]@globeandmail.com](mailto:[REDACTED]@globeandmail.com)>
Subject: a reporter

Hello: my question follows.

On December 21 at 1:33 pm Courts Administration emailed a judgment in case no. T-1391-14 to three people: my counsel, and Alex Kaufman and Orlagh O'Kelly of the Department of Justice. The judgment at this writing remains unavailable to the general public on Canlii or the Federal Court website. Our counsel was in meetings all afternoon; I did not see the Dec. 21 judgment until 5:54 pm. However at 3:54 pm [REDACTED] of the Globe & Mail tweeted, "Federal Court orders Blacklock's Reporter to pay \$65,000 in costs after losing case claiming copyright breach."

s.19(1)

My question: did any person at the Department of Justice forward an electronic copy of the judgment or any summary of it to any person by any method from the time of its issue, 1:33 pm, and the time of [REDACTED] tweet, 3:54 pm? And if so, who, to whom, and when?

Deadline's today.

Regards

Tom Korsi

s.19(1)

s.23

McLeod, Ian W (COMMS)

From: McLeod, Ian W (COMMS)
Sent: December-29-16 1:26 PM
To: Lawrence, Catherine; Kaufman, Alex; Prefontaine, Alain
Subject: RE: [REDACTED]

Good afternoon,

[REDACTED]

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Lawrence, Catherine
Sent: December-28-16 1:30 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>;
Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Subject: RE: [REDACTED]

[REDACTED] Thanks.

From: McLeod, Ian W (COMMS)
Sent: December-28-16 1:19 PM
To: Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Cc: Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>
Subject: RE: [REDACTED]

Thanks.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

s.23

From: Kaufman, Alex
Sent: December-28-16 1:19 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Cc: Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>
Subject: RE: [REDACTED]

I believe Alain is away – I am cc'ing Catherine.

From: McLeod, Ian W (COMMS)
Sent: December-28-16 1:10 PM
To: Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Subject: RE: [REDACTED]

Thanks (sorry, got sidetracked). Will move this now (unless you have any concerns, Alain).

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Kaufman, Alex
Sent: December-28-16 11:01 AM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>
Subject: RE: [REDACTED]

No concerns.

A.

From: McLeod, Ian W (COMMS)
Sent: December-28-16 10:58 AM
To: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>
Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>
Subject: RE: [REDACTED]

Good morning,

[REDACTED]

s.19(1)

s.23

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: McLeod, Ian W (COMMS)
Sent: December-23-16 2:25 PM
To: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>
Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>
Subject: RE [REDACTED]

Thanks all.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Prefontaine, Alain
Sent: December-23-16 2:25 PM
To: Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>
Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>
Subject: RE [REDACTED]

Alain Préfontaine
Directeur général et avocat général principal | Director General and Senior General Counsel
Contentieux des affaires civiles | Civil Litigation Section
Ministère de la Justice Canada | Department of Justice Canada
50, rue O'Connor, pièce 530 | 50 O'Connor Street, room 530

Ottawa, ON K1A 0H8
aprefontaine@justice.gc.ca
Téléphone | Telephone (613) 670-6257
Télécopieur | Facsimile (613) 954-1920
Gouvernement du Canada | Government of Canada

s.19(1)

s.23

De : Kaufman, Alex

Envoyé : Friday, December 23, 2016 2:24 PM

À : McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>;
Demeter, Tracey <Tracey.Demeter@justice.gc.ca>

Cc : * NLS ADAGO <LitBranchADAGO@justice.gc.ca>

Objet : RE: [REDACTED]

From: McLeod, Ian W (COMMS)

Sent: December-23-16 2:21 PM

To: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>

Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>

Subject: RE: [REDACTED]

[REDACTED] Thanks.

Ian McLeod

Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Prefontaine, Alain

Sent: December-23-16 2:21 PM

To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Demeter, Tracey <Tracey.Demeter@justice.gc.ca>

Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>

Subject: RE: [REDACTED]

Alain Préfontaine

Directeur général et avocat général principal | Director General and Senior General Counsel
Contentieux des affaires civiles | Civil Litigation Section

Ministère de la Justice Canada | Department of Justice Canada s.19(1)
50, rue O'Connor, pièce 530 | 50 O'Connor Street, room 530 s.23
Ottawa, ON K1A 0H8
aprefontaine@justice.gc.ca
Téléphone | Telephone (613) 670-6257
Télécopieur | Facsimile (613) 954-1920
Gouvernement du Canada | Government of Canada

De : McLeod, Ian W (COMMS)

Envoyé : Friday, December 23, 2016 2:19 PM

À : Demeter, Tracey <Tracey.Demeter@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>

Cc : * NLS ADAGO <LitBranchADAGO@justice.gc.ca>

Objet : RE: [REDACTED]

Hi there,

[REDACTED]

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Demeter, Tracey

Sent: December-23-16 1:25 PM

To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>

Cc: Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; * NLS ADAGO <LitBranchADAGO@justice.gc.ca>

Subject: RE: [REDACTED]

Hi Ian,

[REDACTED]

Thank you and happy holidays,

* Please remember to use our office group email address when sending updates or requests for information:

LitBranchADAGO@justice.gc.ca

Tracey Demeter

Paralegal | Parajuriste

s.19(1)

Office of the Assistant Deputy Attorney General | Bureau du sous-procureur général adjoint

s.23

National Litigation Sector | Secteur national du contentieux

Department of Justice | Ministère de la justice

50 rue O'Connor Street, Suite 600

Ottawa, (Ontario) Canada K1A 0H8

tracey.demeter@justice.gc.ca

Telephone | Téléphone 613-288-5074 / Facsimile | Télécopieur 613-954-1920

Government of Canada | Gouvernement du Canada

From: McLeod, Ian W (COMMS)

Sent: December 23, 2016 12:57 PM

To: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>

Subject: [REDACTED]

Good afternoon,

Thanks,
Ian

Ian McLeod

A/Manager, Media Relations and Litigation Communications | Gestionnaire p.i., relations avec les médias et communications liées aux contentieux

Strategic Communications | Communications stratégiques

Communications Branch | Direction des communications

Department of Justice Canada | Ministère de la Justice du Canada

iwmcLeod@justice.gc.ca

Telephone | Téléphone 613-617-8327

Facsimile | Télécopieur 613-954-0811

Government of Canada | Gouvernement du Canada

s.19(1)

s.23

McLeod, Ian W (COMMS)

From: Leclerc, Caroline
Sent: December-29-16 2:45 PM
To: McLeod, Ian W (COMMS); Fillion, Marie-Claude
Cc: De Mora, Joe
Subject: RE: [REDACTED]

Thank you, Ian.

Caroline

From: McLeod, Ian W (COMMS)
Sent: December-29-16 2:40 PM
To: Leclerc, Caroline <Caroline.Leclerc@justice.gc.ca>; Fillion, Marie-Claude <Marie-Claude.Fillion@justice.gc.ca>
Cc: De Mora, Joe <Joe.DeMora@justice.gc.ca>
Subject: RE: [REDACTED]

Good afternoon,

[REDACTED]
Please let me know if you have any questions.

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Leclerc, Caroline
Sent: December-28-16 2:30 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Fillion, Marie-Claude <Marie-Claude.Fillion@justice.gc.ca>;
Leclerc, Caroline <Caroline.Leclerc@justice.gc.ca>
Cc: De Mora, Joe <Joe.DeMora@justice.gc.ca>
Subject: Re: [REDACTED]

Hi Ian,

[REDACTED]
Merci,
Caroline

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

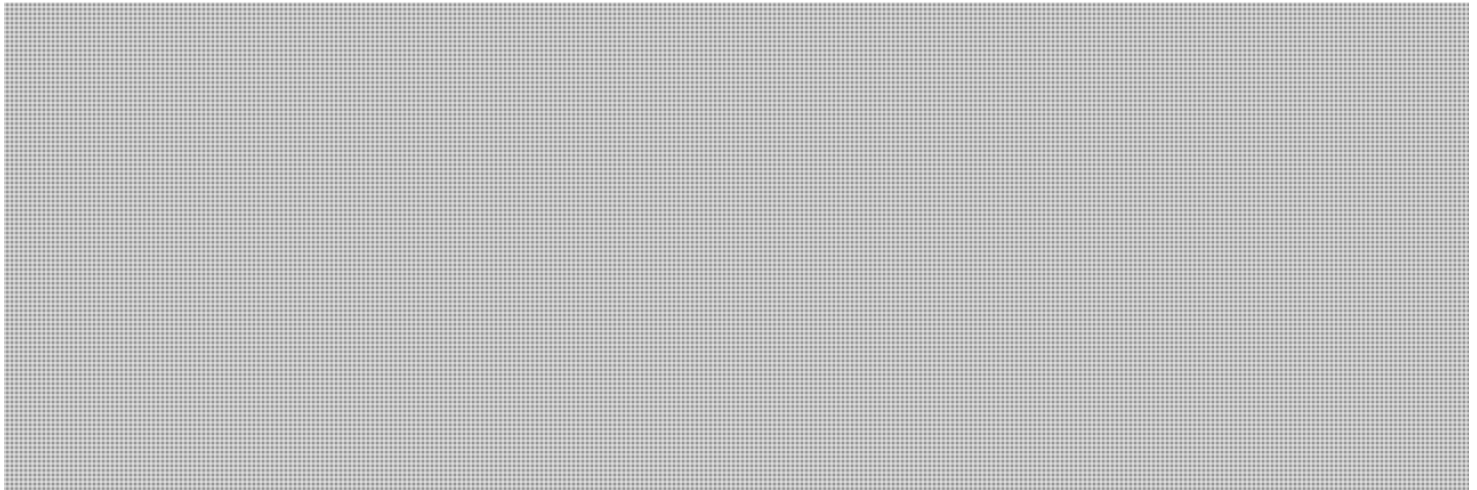
De: McLeod, Ian W (COMMS)
Envoyé: mercredi 28 décembre 2016 13:59
À: Fillion, Marie-Claude; Leclerc, Caroline
Cc: De Mora, Joe

Objet: RE: [REDACTED]

s.19(1)

s.23

Good afternoon,



Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Filion, Marie-Claude
Sent: December-23-16 4:34 PM
To: Leclerc, Caroline <Caroline.Leclerc@justice.gc.ca>; McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Leclerc, Caroline <Caroline.Leclerc@justice.gc.ca>
Cc: Off, Shirley Anne <ShirleyAnne.Off@justice.gc.ca>; De Mora, Joe <Joe.DeMora@justice.gc.ca>
Subject: Re: [REDACTED]

Hi,



Thank you.

Marie-Claude

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Leclerc, Caroline
Sent: Friday, December 23, 2016 4:13 PM
To: McLeod, Ian W (COMMS); Leclerc, Caroline
Cc: Off, Shirley Anne; De Mora, Joe; Filion, Marie-Claude
Subject: Re: [REDACTED]

Ok, thanks.

s.23

[REDACTED]

Merci,
Caroline

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: McLeod, Ian W (COMMS)
Envoyé: vendredi 23 décembre 2016 15:42
À: Leclerc, Caroline
Cc: Off, Shirley Anne; De Mora, Joe
Objet: RE: [REDACTED]

Hi Caroline,

[REDACTED]

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Leclerc, Caroline
Sent: December-23-16 3:37 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Leclerc, Caroline <Caroline.Leclerc@justice.gc.ca>
Cc: Off, Shirley Anne <ShirleyAnne.Off@justice.gc.ca>; De Mora, Joe <Joe.DeMora@justice.gc.ca>
Subject: Re: [REDACTED]

Hi Ian,

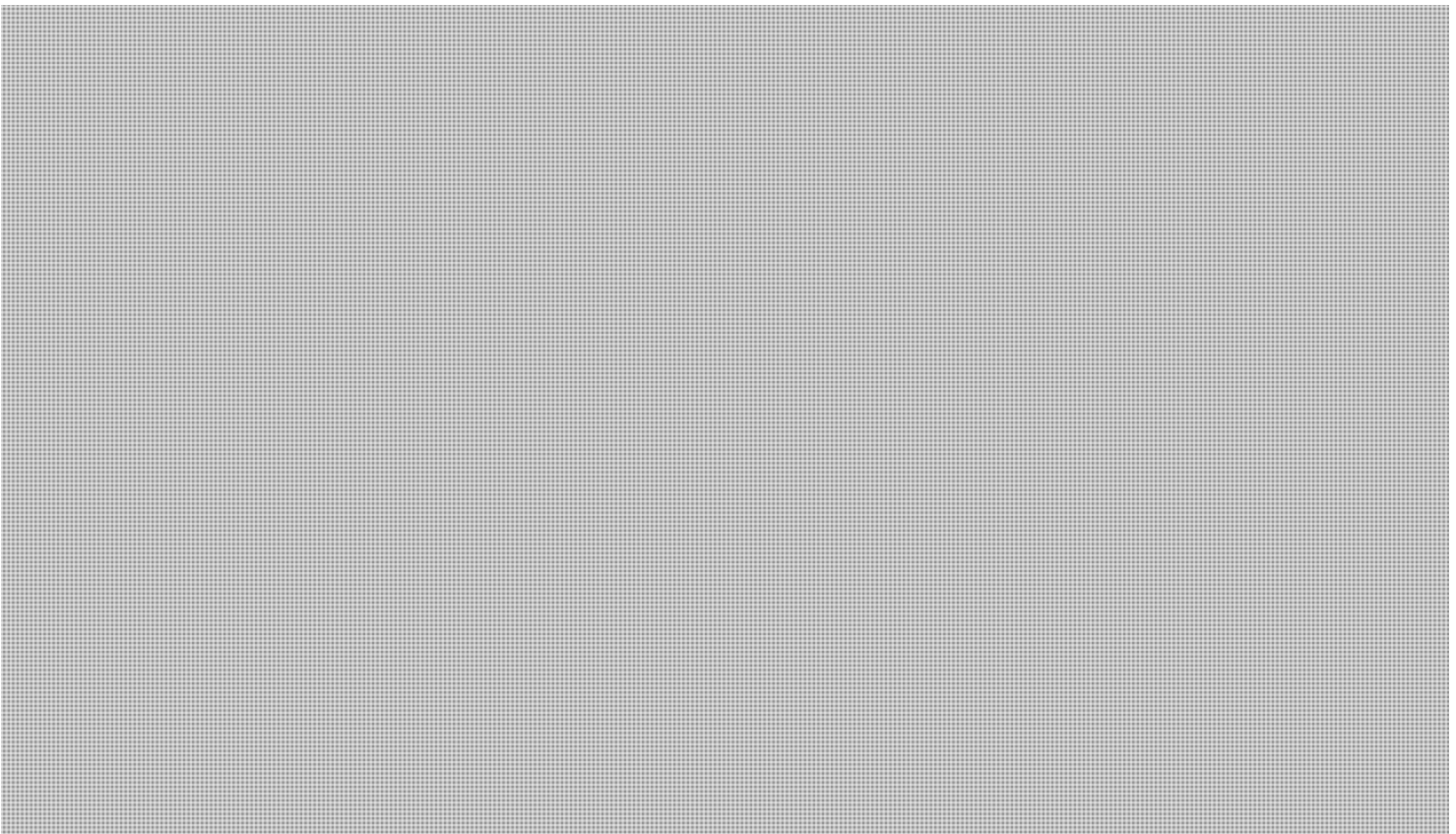
[REDACTED]

Merci,
Caroline

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: McLeod, Ian W (COMMS)
Envoyé: vendredi 23 décembre 2016 14:43
À: Leclerc, Caroline
Cc: Off, Shirley Anne; De Mora, Joe
Objet: [REDACTED]

Hi Caroline,



Thanks,
Ian

Ian McLeod

A/Manager, Media Relations and Litigation Communications | Gestionnaire p.i., relations avec les médias et communications liées aux contentieux

Strategic Communications | Communications stratégiques

Communications Branch | Direction des communications

Department of Justice Canada | Ministère de la Justice du Canada

iwmcleod@justice.gc.ca

Telephone | Téléphone 613-617-8327

Facsimile | Télécopieur 613-954-0811

Government of Canada | Gouvernement du Canada

s.19(1)

McLeod, Ian W (COMMS)

From: McLeod, Ian W (COMMS)
Sent: December-29-16 4:15 PM
To: [REDACTED]
Cc: De Mora, Joe; Girouard, Christian (Ottawa); [REDACTED]
Subject: RE: Info on potential media issue: Blacklock's Reporter

There is a government policy (<https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=27122>) but I'm not sure to what degree it applies to Federal Court employees outside of the Courts Administration Service:

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: December-29-16 4:06 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>
Cc: De Mora, Joe <Joe.DeMora@justice.gc.ca>; Girouard, Christian (Ottawa) <Christian.Girouard@justice.gc.ca>; [REDACTED]
Subject: Re: Info on potential media issue: Blacklock's Reporter

Thanks. I dealt with a similar issue at the House and it spiraled for a couple of weeks, mainly because we did not have a policy or a way of knowing if the changes were made from a Member's office, a party research office or an administration employee. For my own knowledge does the GoC have a policy that speaks directly to the use of resources for this purpose? Would that policy apply to an employee of the Courts?

[REDACTED]

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: McLeod, Ian W (COMMS)
Sent: Thursday, December 29, 2016 3:52 PM
To: [REDACTED] Girouard, Christian (Ottawa)
Cc: De Mora, Joe; [REDACTED]
Subject: RE: Info on potential media issue: Blacklock's Reporter

It wouldn't necessarily be tracked to a specific IP address, but it was one of the Court's, not ours. Someone appears to have made some nonsense changes to the page, though.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: December-29-16 3:47 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Girouard, Christian (Ottawa) <Christian.Girouard@justice.gc.ca>

Cc: De Mora, Joe <Joe.DeMora@justice.gc.ca>; [REDACTED]
Subject: Re: Info on potential media issue: Blacklock's Reporter

Ok. So he is just assuming that is was an official. Is the Department looking into it? Who would have made the changes and what was changed?

I will let you know if they reach out to us.

[REDACTED]

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: McLeod, Ian W (COMMS)
Sent: Thursday, December 29, 2016 3:43 PM
To: [REDACTED] Girouard, Christian (Ottawa)
Cc: De Mora, Joe; [REDACTED]
Subject: RE: Info on potential media issue: Blacklock's Reporter

There is a Twitter account (@gccaedits) that tracks Wikipedia edits from Government IP addresses. There was an edit to the entry on Blacklock's Reporter flagged on December 21 (not sure what was changed at that point) that apparently originated from the Federal Court.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: December-29-16 3:36 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>; Girouard, Christian (Ottawa) <Christian.Girouard@justice.gc.ca>
Cc: De Mora, Joe <Joe.DeMora@justice.gc.ca>; [REDACTED]
Subject: Re: Info on potential media issue: Blacklock's Reporter

Adding [REDACTED]

Thanks for letting us know Ian. Your responses make it clear that the information was shared with the reporter and blogger in question in accordance to the rules.

That said, what is the reference to a Courts Administration official editing a Wikipedia page?

[REDACTED]

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: McLeod, Ian W (COMMS)
Sent: Thursday, December 29, 2016 1:20 PM
To: Girouard, Christian (Ottawa); [REDACTED]
Cc: De Mora, Joe

s.19(1)

Subject: Info on potential media issue: Blacklock's Reporter

Good afternoon,

We received the following response as part of an exchange with Tom Korski from Blacklock's Reporter. Wanted to flag it to you know before the story comes out on Monday, especially since he's copied [REDACTED] who received a copy of the decision from counsel.

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]
Sent: December-29-16 12:35 PM
To: Media-Relations-Medias <media@justice.gc.ca>; [REDACTED]@globeandmail.com>
Subject: Re: a reporter

Dear Ian: thank you for your note. Public, unpublished: I'll explain the distinction later. The problem: the Attorney General is leaking an unpublished decision to her little government lip-readers on the same afternoon some Court Administration Services official is editing Blacklock's Wikipedia page. This doesn't look like public business. It looks like score settling by Crown employees. It has a whiff of Zimbabwe about it. You know this is bound to be raised in a Commons scrum with the Attorney General. Our story runs Jan. 3. It will be unlocked.
Regards
Tom

On Wed, Dec 28, 2016 at 2:31 PM, Media-Relations-Medias <media@justice.gc.ca> wrote:

Hi Tom,

Yes, [REDACTED] was provided with a copy of the decision by Justice counsel upon request. As I mentioned on Friday, once a decision has been released by the Court, it becomes a public document and it would have been available through the courts.

Thanks,
Ian

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]
Sent: December-27-16 10:39 AM
To: Media-Relations-Medias <media@justice.gc.ca>
Subject: Re: a reporter

Dear Ian: thank you; yes, we checked with Federal Court. Nobody asked for it there.

s.19(1)

I note that same day, December 21, at 3:51 pm a local amateur blogger named [REDACTED] published a fulsome account of the decision. This was three minutes before the Globe Tweet. Did the Attorney General's department also email the decision to the blogger? My deadline is Thursday.

Regards

Tom

On Fri, Dec 23, 2016 at 6:01 PM, Media-Relations-Medias <media@justice.gc.ca> wrote:

Hi Tom,

Once a decision has been released by the Court, it becomes a public document. Mr. Kaufman provided the material to [REDACTED] upon request later in the afternoon of December 21, after the court had provided it to the relevant parties via email. This document would also have been available through the Courts Administration Service.

Thanks,

Ian

Ian McLeod

Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]

Sent: Friday, December 23, 2016 12:49 PM

To: Media-Relations-Medias <media@justice.gc.ca>; [REDACTED] <[\[REDACTED\]@globeandmail.com](mailto:[REDACTED]@globeandmail.com)>

Subject: a reporter

Hello: my question follows.

On December 21 at 1:33 pm Courts Administration emailed a judgment in case no. T-1391-14 to three people: my counsel, and Alex Kaufman and Orlagh O'Kelly of the Department of Justice.

The judgment at this writing remains unavailable to the general public on Canlii or the Federal Court website.

Our counsel was in meetings all afternoon; I did not see the Dec. 21 judgment until 5:54 pm.

However at 3:54 pm [REDACTED] of the Globe & Mail tweeted, "Federal Court orders Blacklock's Reporter to pay \$65,000 in costs after losing case claiming copyright breach."

My question: did any person at the Department of Justice forward an electronic copy of the judgment or any summary of it to any person by any method from the time of its issue, 1:33 pm, and the time of [REDACTED] tweet, 3:54 pm? And if so, who, to whom, and when?

Deadline's today.

Regards

Tom Korski

s.23

McLeod, Ian W (COMMS)

From: McLeod, Ian W (COMMS)
Sent: December-29-16 4:32 PM
To: 'Media / Média (FIN)'
Subject: RE: a reporter
Attachments: Re: a reporter

FYI – there was some follow-up on this that I wanted to flag to you, as there will apparently be a story on Monday.

Ian McLeod
Media Relations and Litigation Communications | Relations avec les médias et communications liées aux contentieux
Department of Justice Canada | Ministère de la Justice du Canada

From: Media / Média (FIN) [mailto:fin.media-media.fin@canada.ca]
Sent: December-23-16 1:13 PM
To: McLeod, Ian W (COMMS) <IanW.McLeod@justice.gc.ca>
Subject: RE: a reporter

Thanks Ian. He has not been in touch. I'll let you know if we do hear from him.

From: McLeod, Ian W (COMMS) [mailto:IanW.McLeod@justice.gc.ca]
Sent: December-23-16 1:05 PM
To: Media / Média (FIN)
Subject: FW: a reporter

Good afternoon,

This just came in via our Media Relations e-mail. [REDACTED] wanted to flag this to you (he may already have been in touch).

Thanks,
Ian

Ian McLeod
A/Manager, Media Relations and Litigation Communications | Gestionnaire p.i., relations avec les médias et communications liées aux contentieux
Strategic Communications | Communications stratégiques
Communications Branch | Direction des communications
Department of Justice Canada | Ministère de la Justice du Canada
iwmcLeod@justice.gc.ca
Telephone | Téléphone 613-617-8327
Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

From: Tom Korski [mailto:tom@blacklocks.ca]
Sent: December-23-16 12:49 PM
To: Media-Relations-Medias <media@justice.gc.ca>; [REDACTED] <@globeandmail.com>
Subject: a reporter

Hello: my question follows.

s.19(1)

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Tom Korski

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**of the Access to Information Act
de la Loi sur l'accès à l'information**

Mongelard, Pascal (IC)

De: Snell, Tara <Tara.Snell@justice.gc.ca>
Envoyé: 4 janvier 2017 16:11
À: Major, Grégoire
Cc: Giassa, Natalie (IC); Hudon, Christine (IC); Signorini, Gabriella
Objet: RE: EWN - National Litigation Sector

Do you suppose this is the article referred to in that EWN?: <https://www.blacklocks.ca/court-staff-altered-wikipedia/>

The article states that Blacklock's is appealing the cost award and proceeding with litigation against Environment and Health.

Tara

From: Major, Grégoire
Sent: 2017-Jan-03 9:39 AM
To: Giassa, Natalie <Natalie.Giassa@canada.ca>; Hudon, Christine (IC) <Christine.Hudon@canada.ca>; Signorini, Gabriella <Gabriella.Signorini@justice.gc.ca>; Snell, Tara <Tara.Snell@justice.gc.ca>
Subject: FW: EWN - National Litigation Sector

Bonjour,

Mes meilleurs vœux pour la nouvelle année!

Je vous fais suivre un développement dans l'affaire Blacklock's Reporter.

Grégoire

From: Sadaka-Alberti, Jennifer
Sent: December-29-16 3:36 PM
To: * EWN Distribution <EWNDistribution@justice.gc.ca>
Cc: * NLS ADAGO <LitBranchADAGO@justice.gc.ca>; Kaufman, Alex <Alex.Kaufman@justice.gc.ca>; Prefontaine, Alain <Alain.Prefontaine@justice.gc.ca>; Lawrence, Catherine <Catherine.Lawrence@justice.gc.ca>
Subject: EWN - National Litigation Sector

1395804 Ontario Ltd (Blacklock's Reporter) v. Attorney General of Canada

Jennifer Sadaka-Alberti

Administrative Assistant / Adjointe administrative
Office of the Assistant Deputy Attorney General | Bureau du sous-procureur général adjoint
National Litigation Sector | Secteur national du contentieux
Department of Justice | Ministère de la justice
50 O'Connor Street | 50 rue O'Connor
Ottawa, ON Canada K1A 0H8
Telephone | Téléphone 613-670-6353
Facsimile | Télécopieur 613-954-1920
Jennifer.Sadaka-Alberti@justice.gc.ca

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BLACKLOCK'S Reporter

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Tuesday, January 3, 2017

COURTS

Court Staff Altered Wikipedia

The Federal Court confirms an unidentified employee used a courthouse computer to edit *Blacklock's* Wikipedia page. The edits occurred the same day a judge issued a \$65,000 cost award against *Blacklock's* for attempting to halt unauthorized distribution of copyright works by federal employees. The Attorney General's department admits it leaked the \$65,000 decision to a blogger and *Globe & Mail* columnist.

Andrew Baumberg, counsel for the Federal Court, said that "assuming the integrity of the revision logs kept by Wikipedia", an unnamed staffer used a Court Administration Services IP address to alter the page on December 21. "Employees are not prevented from using Wikipedia," said Baumberg.

"It is the IP address for the Courts Administration Services firewall which provides a single IP address for all internet traffic related to over 620 Administration Services employees and to members of the four Courts served by the Administration," he said.

"Employees are allowed limited personal use of federal networks and devices," said Baumberg. He would not name the person who altered the *Blacklock's* entry, or comment when asked if it was proper for Court staff to edit a plaintiff's Wikipedia page.

'65,000 Lumps Of Coal'

The Wikipedia edits came the same day Justice Robert Barnes issued a \$65,000 cost award against *Blacklock's* in an unsuccessful lawsuit against the Department of Finance. *Blacklock's* sued for \$17,817 after it caught Finance staff copying its works without payment or permission.

Finance staff cut and paste news stories into emails beginning October 10, 2013, five weeks after the department on September 11 asked *Blacklock's* for the cost of a licensing agreement and was quoted the \$17,817 figure. Employees who copied the stories included Stephanie Rubec, currently a spokesperson for Finance Minister Bill Morneau. Rubec had requested *Blacklock's* licensing rates on September 11, 2013.

In his ruling, Justice Robert Barnes described *Blacklock's* as "self-serving"; said the copyright claim had no "legal merit"; denied the case "raised 'strong public interest considerations'"; and concluded the lawsuit "should never have been commenced let alone carried to trial."

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Deborah Harrison
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The December 21 decision was privately emailed by a Court clerk to lawyers in the case. The Court's Baumberg said he was not involved in any leaks of the document. "I myself have not received any such request," he said. In a timeline of the December 21 release:

- At 1:33 pm the decision was emailed to government attorney Alex Kaufman;
- At 3:51 pm an Ottawa blogger, Howard Knopf, published the decision alongside a cartoon of a brick of coal in a Santa hat with the comment: "It is difficult, given the time of year and the circumstances, not to think about a lump of coal – indeed 65,000 of them";
- At 3:54 pm *Globe* columnist James Bradshaw published a Tweet, "Federal Court orders *Blacklock's Reporter* to pay \$65,000 in costs after losing case claiming copyright breach".

Attorney General Jody Wilson-Raybould's department told *Blacklock's* that staff leaked the decision to the blogger and *Globe* columnist. The department did not explain its motive. Wilson-Raybould in a 2015 *Ministerial Mandate* letter committed to "set a higher bar for openness and transparency"; "avoid escalating conflicts unnecessarily"; and regard media as "professionals who, by asking necessary questions, contribute in an important way to the democratic process. Your professionalism and engagement with them is essential."

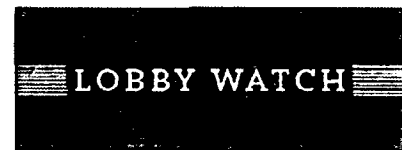
Blacklock's is appealing the \$65,000 cost award. The company is also proceeding this month with litigation against the Department of the Environment and Health Canada for unauthorized distribution of its copyright works without permission or a licensing agreement.

By Staff 

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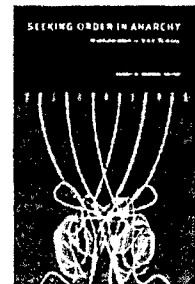
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Seeking Order in Anarchy

Robert W. Murray,
Editor



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